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Religious Pluralism in International Human Rights Law

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Religious Pluralism in International Human Rights Law.

List of abbreviations.

American Convention on Human Rights: ACHR/the American Convention.

Association of South East Asian Nations: ASEAN.

Convention for the Rights of the Child: CRC.

Convention on the Elimination of All Forms of Discrimination against Women: CEDAW.

Council of Europe: CoE/the Organization.

European Convention on Human Rights: ECHR/the Convention.

European Court of Human Rights: the Court/ECtHR.

European Union: EU.

Inter-American Commission of Human Rights: the Commission.

Inter-American Court of Human Rights: IACHR/the Inter-American Court.

International Covenant on Civil and Political Rights: the Covenant/ICCPR.

New Religious Movements: NRMs.

New Religious Presence: NRP.

Organization of American States: OAS.

United Nations: UN.

United Nations' Human Rights Committee: the Committee/UNHRC/HRC.

Prolegomena.

As a social force, Religion has always been at the centre of social dynamics. From the incipient beginnings of human societies to present times, it has been a constant and structural factor. The most powerful of Universe's eroding forces—that is, Time—has carried religions along the History of Mankind, driving them through an ascending cycle of emergence, prosperity, acme, before subjecting them to decline and finally disappearance. It carried religions through life and death, from Babylon and before to modern times, but has never been able to erase or substitute something else to them. As a social force, Religion has proven to be a powerful constant in the History of societies and civilizations.

This being said, if Religion has never disappeared from human societies, religions, by contrast, have been subject to a variety of movements across history. Religion, whether it be conceived as a concept or as a social fact, appears indeed to be constant in the life of societies, cultures and civilizations. By contrast, the religions that have animated the life of each of them, across the ages, have proven to be quite distinct, and different on many dimensions—starting with the value systems that that convey. Unlike Religion, as a concept or a social reality, these religions, taken individually, appear to have been following a line going from emergence to disappearance[1].

The reason of this state of fact seems to lie in the nature of what religion is. From an existential position, religion occupies a specific place in individual life; it is at the confluents of many core elements of the latter, from individual identity to individual behavior and individual choices, especially those of a moral or political nature for example. Being so, it is deeply connected to individual life, to the very existence of individuals, and hence, by the token of the latter, to society at large. The centrality of its position, within the ontology at the bases of the individual existence, locates it at the centre of the ontology making the bases of society itself. It may be for that reason that it has been a constant in the life of societies, cultures and civilizations. Religion seems to fulfill a specific role, or provide specific needs for individuals and societies, that maintain its existence over time.

[1] *E.g.*, ONFRAY (M.), *Décadence*. *Vie et mort du judéo-christianisme*, Mayenne, Flammarion, 2017, 652 p.

Therefore, as intuitive as it may be, religion remains quite a complex reality that many scholars have attempted to define. According to E. Durkheim, it is a common system of beliefs and practices which unifies all those who share it into a community[2]. For O. Rudolf—a theologian—, it is rather the complex result to which yields the human disposition or inclination towards knowing the sacred[3]. F. Nietzsche defines it as the representation of "another-world (behind, below, above)"[4] which gives its meaning to the material world. And according to psychologist W. James, it is, in turn, the set of feelings, acts, and experiences of individuals in relation to what they consider the divine[5].

As can be inferred from the various definitions laid above, religion is a complex concept which is difficult to grasp fully and satisfactorily for the human mind. Depending on the focus adopted, some of its aspects appear and disappear, change in their nature or their core substance. Depending on the discipline chosen to confront it, and the heuristics that make the latter, religion appears with different traits. In its search for determining the meaning of concepts and their origins, Philosophy tends to explore religion from its sources (often scriptural), and its development by individuals (doctrine) through intellectual elaborations or daily behavior. From that perspective, Philosophy tends to consider religion as a meaning provider, an intellectual structure giving meaning for individuals—"another-world (behind, below, above)" which gives its meaning to the material world, in F. Nietzsche's words[6]. Theology, which explores religion from within, tends to rather focus on the internal dynamics of religion, and therefore its doctrine. Hence a more spiritual consideration of religion, such as, for example, in O. Rudolf's noumenal inclination. Eventually, as they dwell on the way religion is perceived and manifested by individuals in social life, psychology and sociology

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[2] DURKHEIM (E.), *Les Formes Elémentaires de la Vie Religieuse. Le Système Totémique en Australie*, Paris, LGF — Livre de Poche, 1991, pp. 108-109. E. Durkheim conceives religion and established Church as indissociable.

[3] OTTO (R.), *Le Sacré. L'Elément Non-Rationnel dans l'Idée du Divin et sa Relation avec le Rationnel*, Paris, Payot, 1949, pp. 230-231.

[4] NIETZSCHE (F.), *The Gay Science*, New York, Vintage Books, 1974, para. 151, p. 196.

[5] JAMES (W.), *The Varieties of Religious Experience*, Cambridge, Massachusetts, Harvard University Press, 1985, p. 34.

[6] NIETZSCHE (F.), *The Gay Science*, para. 151, p. 196.

tend rather to describe the acts and behaviors that religion leads to, either at the individual level or at the social scale. E. Durkheim's view of religion as a common system of beliefs and practices which unify all those who share them into a community provides an eloquent example to that regard: it focuses on what individuals do, when behaving religiously.

Unlike these disciplines, law engages religion in its practical meaning. As a discipline, law is in charge of producing and analyzing the rules of conduct established in a given society, the set of laws regulating social phenomena. Therefore, the legal tools in force within a society seek to regulate social phenomena, and therefore, to a certain extent, also anticipate their future evolutions. Often, this *leitmotiv* of the law leads to adopting definitions which have a large scope, likely to grasp the future evolutions of a given phenomenon.

In other words, when defining a concept, law, as a discipline, confronts a series of behaviors. Then, forging a general category by which to consider these behaviors, it proceeds with laying the corresponding regulations. Therefore, it does not consider religion as a set of beliefs only; rather, it puts the emphasis on the practices emanating from religions for the purpose of adopting regulations.

This mental stance endows the definition of religion with a larger scope than the ones put forth by the other social sciences. International human rights law poses indeed that the terms 'religion' and 'belief', which seem to be synonymous in the human rights system, correspond to "views that attain a certain level of cogency, seriousness, cohesion and importance"[7]. A definition, by largeness of its scope, which can potentially encompass all religions in the world, those that exist and those yet to exist. A definition, also, that does not conceive of religion as one specific reality, one specific line of belief or of conduct, nor as one specific way of relating to transcendency. In other words, it does not rely on any specific presumption over what religion is. Rather, this definition parts from what individual believers seem to consider themselves as 'religion', which it extracts from the way they believe and their corresponding behavior, instead of examining what they believe or what they appear to be

[7] ECtHR, Chamber, 25/02/1982, *Campbell and Cosans v. United Kingdom*, Applications n° 7511/76 and 7743/76, para. 36. The reproduced wording is the one adopted by the European Court of Human Rights in *Campbell and Cosans v. United Kingdom*. As will be explained *infra*, nevertheless, this definition has been adopted by other human bodies when assessing cases involving religious rights.

practicing. To put it in a simple wording, the concept of 'religion', in this definition, does not appear to be influenced by one specific religion that those who elaborated the definition might have had in mind when elaborating the definition. Religions can be very diverse; to pose one them as an intellectual matrix to settle what religion itself is would limit the scope of the definition thus obtained. The definition of religion that would then emerge would be condition to the resemblance with the religion forming the said intellectual matrix. It would limit the scope of the definition of religion as a concept.

Religions, indeed, can be very diverse. They tend to differ on many dimensions. They tend to convey different value systems, different practices and rituals, different basic assumptions over the existence, different conceptual premises for reasoning, different ontological categories making the human mind… Even such a as basic concept as deity itself tends to vary from one to another[8]. And, in addition to that, the religious experience that they convey also seems to be diverse.

In addition to this diversity among religions, the religious experience, as lived by individuals, also seems to be diversifying. As will be detailed *infra*[9], religious scholarship in social sciences is, indeed, constantly pointing to a change in the link that ties individuals with their beliefs. That is, according to religious scholarship, the construction of the religious experience seems to have undergone a deep shift, which deepens its complexity. On the one hand, contemporary religiosity appears as a multi-level process, in that its elaboration starts at the individual level and then projects onto the community level and, by the same token, onto society at large. It involves the individual, the community, and society. On the other hand, it is also multi-dimensional: it engages the grass-root level—that of individuals and groups of individuals—, the institutional level, as much as the very dimension making the relationships between these two. Each level drives a proper set of novel questions and issues, and opens new areas of research for social sciences.

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[8] DE ROSNY (L.), « L'idée de Dieu dans Philosophie Religieuse de la Chine », *Bulletin de la Ligue Nationale contre l'Athéisme*, 12ème Année, 1899, pp. 165-186.

[9] Part II—Chapter 1. Patterns of postmodern Religiosity.

Indeed, as L. Woodhead argues, religious scholarship seems to have undergone a deep change of paradigm throughout the decades leading from the second half of the XXth century to the current days[10]. After the fall of secularization as the main paradigm for understanding religion in society, the latter's survival in society showed new dynamics that impulsed the emergence of new analytical paradigms. More precisely, secularization theory was advocating for a gradual disappearance of religion from society, from social spaces and state institutions. The root of this proposition was the assumption that religion was disappearing from human minds. In other words, religion was evacuating individual minds as a source of belief and understanding of reality, therefore disappearing from society and social spaces, therefore ceasing to be a basis for individual behavior, for the social patterns structuring society and for politico-institutional action[11]. Thus, religious scholarship was axed on "the decline of the unifying and extensive influence of monopolistic churches in their territories"[12]. More so, it conceived the decline of religion "not simply as the decline of a particular mode of European religiosity but as the decline of religion *per se* under the conditions of modernity"[13]. For that being so, contemporary scholars of religion explain that the point where "sociology of religion has gone wrong is in elevating historical contingency to the level of general theory"[14]. The secularization paradigm failed to grasp what a reconfigured "religious vitality"[15] was showing in terms of relocation of religion to specific areas of the individual existence and social life, the model of society that resulted from it, the types of social dynamics that resulted from it on the macro-level of society, the consequent redistribution of power within the latter as well as other features related to globalization[16].

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[10] WOODHEAD (L.), « Old, New, And Emerging Paradigms In The Sociological Study of Religion », *Nordic Journal of Religion and Society*, 22(2), 2009, pp. 103-121.

[11] On this theme, BARKER (E.), *ed.*, BECKFORD (J. A.), *ed.*, DOBBELAERE (K.), *ed.*, *Secularization, Rationalism, and Sectarianism. Essays in Honour of Bryan R. Wilson*, Oxford, New York, Clarendon Press, 1993, 322 p.; BERGER (P. L.), *ed.*, *The Desecularization of the World. Resurgent Religion and World Politics*, Washington, D.C., Ethics and Public Policy Center, 1999, 135 p.

[12] WOODHEAD (L.), « Old, New, And Emerging Paradigms In The Sociological Study of Religion », p. 105.

[13] *Ibid.*

[14] *Ibid.*

[15] *Ibid*.

[16] *Ibid.*, pp. 110-115.

Henceforth, when secularization theory was abandoned as a reliable paradigm for the analysis of the dynamics of religion in society, other models emerged, and allowed to grasp the new phenomena impulsed by the religious vitality[17]. These new phenomena renewed religious scholarship profoundly; they brought new issues to explore and opened new areas of research for the three main social sciences involved in religious scholarship—that is, law, sociology, and political sciences.

I. The disciplinary Views on Religion.

The change of paradigm on religion and society readjusted, as explained, the image of religion in society that social sciences had adopted in the previous decades. The new 'religious state of fact' thus brought forth raises a set of new issues to analyze and explore for international human rights law (1) as much as for sociology (2) and political sciences (3). Even more so, it may call for new ways of approaching the classical questions these disciplines used to address, and hence require a change of perspective in the said disciplines. In other words, it may require a change in the methodologies employed thus far to analyze the frictions taking place between this constantly clashing couple: religion and society.

1. International Human Rights Law.

International human rights are the rights of the human being. They are the legal translation of the latter's human nature. Therefore, the very purpose of international human rights law is to guarantee for everyone, at any time and in every society, the due respect of the most fundamental aspects of the human person and its expression in social life.

More specifically, the right to freedom of conscience and religion seeks to guarantee to everyone the right to think and believe as they see fit, which "includes [the] freedom to change (…) religion or belief, and [the] freedom, either alone or in community with others and in public or private, to manifest (…) religion or belief in teaching, practice, worship and

[17] That is, the patterns by which religion was still surviving in society.

observance”[18]. In other words, it guarantees for all individuals of all societies the internal freedom to embracing any religion or belief, and the external freedom to act by the latter or execute the practices it commands. It guarantees to every individual both the intellectual and the practical dimensions of freedom, in the area of religion.

When confronting the text with its context of application, the international bodies in charge of surveilling the application of this right by the states have been confronted to the necessity of defining such terms as ‘religion’ and ‘belief’. The latter had to be defined in such a way as to comprise any—existing or yet to exist—religion, and be, at the same time, precise enough so as for the provision to be applied by states. The difficulty of the task lied in the balance to strike between these two somewhat contradicting practical features.

The first international body to lay a definition of the term ‘belief’, and henceforth ‘religion’, in international human rights law was the European Court of Human Rights (ECtHR). In its 1986 judgment, *Campbell and Cosans v. United Kingdom*, the latter stated that the term ‘belief’ “denotes views that attain a certain level of cogency, seriousness, cohesion and

[18] This wording of the Universal Declaration of Human Rights has been later developed in the other treaties guaranteeing said freedom. The International Covenant on Civil and Political Rights (ICCPR) enacts this guarantee in its article 18: “*Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice*”. Article 12 of the American Convention on Human Rights states: “*Every person has the right to the freedom of conscience and belief. This right implies the right to conserve one’s religion or their beliefs, or to change religion or beliefs, as well as the freedom to profess and broadcast one’s religion or their beliefs, individually or collectively, in public and in private*” [unofficial translation]. Article 9 of the European Convention on Human Rights terms this guarantee in the following words: “*Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance*”. In a different wording, the African Charter on Human and Peoples’ Rights guarantees this freedom in its article 8: “*The Freedom of conscience, the free practice and profession of religion, are guaranteed. With the exception of public order commandements, no one shall be subject to any measure of constraint aiming at restricting the manifestation of these freedoms*” [unofficial translation].

importance"[19]. This definition has later been adopted by other bodies such as the United Nations' Human Rights Committee[20].

Based on its wording, the definition appears to be quite general in scope. It does not circumscribe to any one religion, or any traditional religion proper to a particular society; it encompasses a wide range of religions including those which are newly formed. Therefore, it also applies to, and comprises, the new religious movements emerging from the spiritualization of the religious lived experience[21]. Newly formed churches emanating from traditional religions, the new hyperreal pagan religions and the religious movements of the same kind all seem to fall into the scope of this definition. Consequently, they may all prevail from its protection, regardless of their constituting patterns or degree of novelty. This situation drives two issues for the law to confront.

First, indeed, how to make sure that such a diversity of believers be protected through one unique provision? In the case where some religions, some religious movements or practices fully admitted in one society come, once practiced in another society, to contradict the established social order of the latter, how can the said society confront them in light of international human rights law? Does this situation call for all societies to admit any religion, religious movement or practice when one of the said societies admits it, or can it be the case that one of them legitimately—lawfully—prevents such practices from taking place? In other words, when it coms to regulating religious practices, the primacy goes to the regulating state

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[19] ECtHR, Chamber, 25/02/1982, *Campbell and Cosans v. United Kingdom*, Applications n° 7511/76 and 7743/76, para. 36.

[20] HRC, Adoption of views, 13/07/2017, *Alger v. Australia*, communication n° 2237/2013, para. 6.5; HRC, General Commentary 22, CCPR/C/21/Rev.1/Add.4, 27/09/1993, para. 2. Also, the same approach seems to be that of the Interamerican Court of Human Rights, especially in what stems from its sentence in Corte IDH. Caso de la Comunidad Mayagna (Sumo) Awas Tingni Vs. Nicaragua. Fondo, Reparaciones y Costas. Sentencia de 31 de agosto de 2001. Serie C No. 79; Corte IDH. Caso de la Comunidad Moiwana Vs. Surinam. Excepciones Preliminares, Fondo, Reparaciones y Costas. Sentencia 15 de junio de 2005. Serie C No. 124. The Inter-American Court does not mention the right to religious freedom as such in these sentences. Therefore, it does not conclude to any violation of article 12 of the American Convention on Human Rights. But it finds a violation of the 'spiritual integrity' of the native communities affected in the case, which is, in substance, a statement of violation of their religious freedom. *See*, HENNEBEL (L.), « La protection de 'l'intégrité spirituelle' des indigènes. Réflexions sur l'arrêt de la Cour interaméricaine des droits de l'homme dans l'affaire Comunidad Moiwana c. Suriname du 15 juin 2005 », *Revue Trimestrielle des Droits de l'Homme*, Volume 66 — 2006, pp. 253-276.

[21] *See, infra*, Part II—Chapter 1. Patterns of postmodern Religiosity.

authorities or to the individual whose benefits from the human right to freedom of religion and belief?

Second, on a more macro level perspective, granting the individual right to religious freedom to every individual amounts to locating all religions, religious movements, and the organisations that embody them at the same distance from the state. In other words, the equality of individuals before the individual right to religious freedom entails, in principle, an equality of treatment, by the state, of the religious organizations to which these individuals belong. An issue that brings the following question: what are the international human rights law standards in the area of state and Church relationships?

All this questioning seems to delineate two major issues for international human rights law scholarship to face. First, that of the contours of the individual right to religious freedom, which seems to call for a reconceptualization[22]. Second, the kind of relations to be maintained, according to international human rights law, between religious institutions and the state[23]—especially when they concern the relations of the state with those religions considered as traditional religions.

At the heart of the legal questioning remain the individuals themselves, what they be entitled to and what they have to abide by, in the society where they evolve. And despite being an issue of law and individual rights, these questions also have a social dimension, whose exploration is sociology's task to carry.

2. Sociology.

Religion represents also a wide area of research for sociology. It is often encompassed within a sub-field of the latter discipline, often referred to as 'sociology of religion'. Since sociology,

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[22] *See*, such cases as HRC, Adoption of views, 31/10/2007, *Prince v. South Africa*, communication n° 1474/2006; HRC, Adoption of views, 19/07/2013, *Mann Singh v. France*, communication n° 1928/2010; HRC, Adoption of views, 01/11/2012, *Singh v. France*, communication n° 1852/2008; HRC, Adoption of views, 22/07/2011, *Singh v. France*, communication n° 1876/2009. Also, CHAIBI (M.), *L'Islam dans la jurisprudence de la Cour Européenne des droits de l'Homme*, Master Thesis, University Lille II, septembre 2017, 119 p.

[23] TEMPERMAN (J.), *ed.*, *State-Religion Relationships and Human Rights Law. Towards a Right to Religiously Neutral Governance*, Leiden, Martinus Nijhoff Publishers, 2010, 382 p.

as a discipline, is the descriptive study of society, the sociological interest in religious freedom is not that of how the latter be configured. Sociology of religion dwells rather on what individuals tend to do when exercising their religious freedom; on which are the agents and core processes involved in the construction of the religious lived experience.

More precisely, when dwelling on the construction processes of religiosity, four central issues tend to emerge. First, its perception by the variety of individuals who compose society[24]. As O. Breskaya and G. Giordan argue, the social perception of religious freedom is "[s]imilar to the concept of social perception in social psychology, which describes the impressions and psychological factors that influence the process of interpersonal understanding during the social interaction, [and therefore] considers the various individual and structural factors that affect the construction of the meaning of religious freedom in society"[25]. In other words, what is meant by 'perception of religious freedom' is the mental process through which religious behavior is received by other people than those who adopt it. Analyzing the social perception of religious freedom is analyzing how the external dimension of religious freedom—in fact the concrete exercise thereof—is considered, understood, valued by individuals.

Analysing this perception gives an image of how individuals view religious freedom, how the society conceptualizes it; it puts into light the ontology that revolves around religious freedom in a given society and further exposes how those in charge of shaping its construction and setting its (legal) configuration frame it. It indicates how the Judiciary constructs religious freedom, especially in the context of democratic regimes where the Judiciary has a

[24] BRESKAYA (O.), GIORDAN (G.), « Measuring the Social Perception of Religious Freedom: a Sociological Perspective », *Religions*, 10(4), 2019, pp. 274-292. Also, BRESKAYA (O.), GIORDAN (G.), ZRINSČAK (S.), « Social perception of religious freedom: Testing the impact of secularism and state-religion relations », *Social Compass*, 00(0), 2021, pp. 1-19.

[25] BRESKAYA (O.), GIORDAN (G.), « Measuring the Social Perception of Religious Freedom… », p. 277.

determining role[26], and sets the further issue of determining which dynamics and social forces the Judiciary faces when setting its configuration in case law[27].

Consequently, understanding the role played by religious institutions and congregations representing believers is also central for understanding the dynamics of religious freedom[28]. It is essential, in fact, given the context of spiritualization that individualizes the beliefs and the practices, in that this context leads to accentuating the independence of individuals from religious institutions at the same time as decreasing the legitimacy of the latter when it comes to influencing public authorities—government or Judiciary—in relation with the regulations with which to endow religious freedom. Hence, also, an invitation for further studies on the evolution of state-religion and state-Church relationships[29].

At the same time, the spiritualization of religiosity gives way to new forms of religiosity, new religious movements, and new religious practices[30]. As a consequence, the religious landscape of today's societies appears as a *mosaïque* of different and diversified religious movements, some majoritarian and other minorities, in continuous interaction and evolution. The society, therefore, appears to be a free market of religious movements, presented for individuals to opt for or not[31], as operators for which to opt-in or from which to opt-out, and invites to study further the social impact, status and treatment of religious minorities.

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[26] RICHARDSON (J. T.), « The judicialization of religious freedom: Variations on a theme », *Social Compass*, 00(0), 2021, pp. 1-17.

[27] All these issues are grouped into a relatively new area of research specializing in the processes of judicialization and de-judicialization or religious freedom. *See* RICHARDSON (J. T.), « The judicialization of religious freedom: Variations on a theme »; RICHARDSON (J. T.), LEE (B. M.), « The Role of the Courts in the Construction of Religious Freedom in Central and Eastern Europe », *Review of Central and European Law*, 39(3), 2014, pp. 291-313; RICHARDSON (J. T.), « Managing Religion and the Judicialization of Religious Freedom », *Journal for the Scientific Study of Religion*, 54(1), 2015, pp. 1-19; MARYL (D.), VENNEY (D.), « The dejudicialization of religious freedom? », *Social Compass*, 00(0), 2021, pp. 1-17.

[28] FOX (J.), FINKE (R.), « Ensuring Individual Rights through Institutional Freedoms: The Role of Religious Institutions in Securing Religious Rights », *Religions*, 12, 2021, pp. 289-290.

[29] As the interactions that place between the state and religious communities of believers.

[30] *Infra*, Part II—Chapter 1. Patterns of postmodern Religiosity. In this vein, for example, G. Giordan proposes to explore the evolution of prayer, even within as traditional as Christian religions. *See*, GIORDAN (G.), *ed.*, SWATOS (W. H.), *ed.*, *Religion, Spirituality and Everyday Practice*, pp. 77-88.

[31] YANG (F.), *Religion in China. Survival and Revival Under Communist Rule*, New York, Oxford University Press, 2012, 245 p.; JELEN (T. G.), *ed.*, *Sacred Markets, Sacred Canopies. Essays On Religious Markets and Religious Pluralism*, Oxford, Rowman & Littlefield Publishers, 2002, 215 p.

All of these issues are key for understanding religion in society today. Questioning them through sociology is of special relevance insofar as they allow to picture the real state of society with empirical research and data. Empirical data are indeed the primary tool for shedding light on the dynamics at the heart of an issue. In other words, the empirical research of sociology brings-up the primary material for the legal development of religious freedom, and for the analysis of the corresponding behavior adopted by state authorities, which is political sciences' task to carry.

3. Political Sciences.

Political sciences are the discipline that analyzes state policies. A state policy can be described as a consistent set of measures—carried through a wide array of means ranging from legal documents to verbal statements—taken by the state in order to manage a given social issue. Thus, to analyze the policy of a state regarding a certain issue requires a multi-level approach. First, keeping in mind the legal framework in force in the area of the said issue, it requires identifying the stakeholders involved, and the relationships they have with the state. Then examining the public discourse and statements regarding that particular issue, the ideologies engaging with it, and the historical stance of the state regarding it.

More precisely, analyzing a state's policy regarding religious freedom requires first to analyze the process through which religious freedom is elaborated and configured. In other words, it is not only analyzing the process that ultimately yields in the law governing religious freedom; it is rather analyzing all the steps and measures taken in order to guarantee its respect, including the law, as much as any measure taken *a posteriori* to the latter's enactment[32].

The said analysis questions directly the very place left for religion in the state structure. Whether religious freedom is the product of Parliament as it has been the case historically, or that of the Judiciary as the judicialization of religious freedom seems to suggest, analyzing the

[32] GRIM (B. J.), *ed.*, FINKE (R.), *ed.*, *The Price of Freedom Denied. Religious Persecution and Conflict in the Twenty First Century*, New York, Cambridge University Press, 2011, 257 p. is an example of policy analysis. In this *opus*, the authors study the impact of state regulations on, and the roots of religious conflicts in, various societies. They also provide comparisons between countries having high regulations on religious freedom and others with fewer regulations. They show that religious conflict in a society rests upon the—restrictive or liberal—type of religious policies carried out by the state. *See* GRIM (B. J.), *ed.*, FINKE (R.), *ed.*, *The Price of Freedom Denied*, pp. 212-213 for conclusions.

way religious freedom is guaranteed by the state requires to examine the interactions that take place between the state and religious groups and organizations. Whether these interactions be strictly formalized or legally constrained is of little importance for political sciences[33]. The points of relevance are the interactions themselves, and what their impact on religious freedom may be. Henceforth, also, it is of importance to determine how the state relates to religious minorities.

In a context of individualization of the religious experience[34]; in a context where the social power of traditional religions and churches is decreasing[35], states tend to be more and more detached from religious authorities. In fact, even in non-democratic countries where religions still have a strong social power, where the ties between states and religions remain also more or less powerful, the relationships between states and religious organisations seem to be conditioned upon the latter's cooperation with—or at least non-interference when they are critical of—government authorities[36]. That is, a distance between states and religious authorities seems to be taking place even in non-democratic contexts: the state's ties with religions being correlated to the type of action carried by religious authorities in society. But despite this apparent distanciation, religions still play a role in the configuration and management of political issues, albeit indirectly—that is, through the influence they may have in the social sphere.

Accordingly, in order to understand the relationships between the state and religious groups and organizations, it is of importance to analyze how the political entities composing the state relate to religion as a social fact. That is, the relationship has first to be understood upstream,

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[33] The legal framework set for the interactions between the state and religions, religious groups or organizations, is not relevant for such an analysis. Regardless of the system put in place, governmental authorities seem to still maintain contacts with religious authorities and organizations, even under systems that forbid or do not recognize any official relationship between the state, as a public entity, and the religious organizations. Even under such a system as the French Laïcité, official authorities maintain contacts with religious authorities and organizations, either on an informal basis or by the token of unions who represent believers. *See* BOYER (A.), « Comment l'Etat laïque connaît-il les religions ? », *Archives de sciences sociales des religions*, 129 | janvier - mars 2005, paras. 21-25. As an example, French President Emmanuel Macron had an intervention before such an organisation, *La Conference des Evêques de France*, in early 2018, shortly after he was elected.

[34] *See*, *infra*, Part II—Chapter 1. Patterns of postmodern Religiosity.

[35] *Ibid*.

[36] SARKISSIAN (A.), *The Varieties of Religious Repression. Why Governments Restrict Religion*, New York, Oxford University Press, 2015, 245 p.

in its principles and central patterns. Such an analysis calls for dwelling on the political and media discourse on religion, as well as the ideologies that soak their elaboration. In other words, it calls for analyzing the political speech on identity, on the way political parties relate to migration issues, and their anchor points in the political and ideological spectrums: secularism, conservatism, populism, sovereignism or globalism, liberalism, free-market…

This two-level analysis amounts to a full understanding of a state's domestic policy regarding religion, as well as regarding the beyond-world from which the religion stems. And allows, *de facto*, to outline its international projection in matters that relate to religion[37].

In conclusion, analyzing religious freedom from a political science perspective requires a tri-dimensional approach. It commences with analyzing the factual relationships between the state and religious groups and organizations. Then, it determines the state's global approach to religion, by setting the ideologies and the historical trajectory that underpins these relationships. And eventually, it sketches the international projection of this blanket approach though state diplomacy.

Studying religion in society is a complex and multi-faceted task. As O. Breskaya and G. Giordan argue, the "novelty of global challenges for religious freedom creates a new task for sociologists—to consider [the] existing approaches to religious freedom analysis and revise its sociological definitions"[38]. And this new task—in fact, this new need—for political sciences can be extended to law and sociology as well. The three disciplines seem to face the same issues; the differences between the three disciplines stem only from the viewpoint adopted by each one when engaging with them. When law focuses on the legal framework as laid in legal documents, political sciences dwell on the wider sphere of state practices and

[37] Even though international relations' logics and patterns seem to differ, on many levels, from those of domestic politics, the latter are directly related to the former through a complex agencement of several factors. These factors comprise the existing cooperation ties between religious groups/organizations and the state—which depend on the configuration of state and Church relationships domestically; they comprise the state's interests on the international arena; and they also comprise the ideological premises on which the state's international practice rests. *See*, BURGOŃSKI (P.), « Religion and Polish Foreign Policy in the XXI Century », *Politics and Religion Journal*, Vol. 14, No 2, 2020, pp. 339, 341-349. Also, HAYNES (J.), « Trump and the Politics of International Religious Freedom », *Religions*, 2020, 11, pp. 385-405.

[38] BRESKAYA (O.), GIORDAN (G.), « Measuring the Social Perception of Religious Freedom… », p. 275.

behavior before the same issue, and sociology examines how the legal framework at stake is materialized by the different components of society.

Today's "global challenges"[39], as put by O. Breskaya and G. Giordan, emphasize the complexity of religion, as a study subject, and the corresponding task to undertake for its study. It calls for an integrated approach of all three disciplines, with a multi-disciplinary focus. In fact, at the heart of all the issues that the three disciplines tackle, each with its own perspective, there are essentially two. Two themes rem to unite all the issues that religious scholarship appears to be facing: individual religiosity on the one hand, and religious diversity on the other. These two themes seem to be the seeds from which all the issues sketched by these three disciplines sprout.

II. The Multi-Disciplinary urge for Studying Religion.

The need for combining sociology, law and political sciences when studying religion resides in the fact that the issues they face are emanations of the same nodes (A). While the core issues are the same, the viewpoints adopted are different. While the core matter is the same, the end result is distinct. In other words, each discipline parts from the same themes, that it questions differently and thus sheds a distinct sphere of light on them. One of these issues, that all of the three disciplines appear to be facing, is that of diversity and pluralism (B). An issue that sparks as one of the most pressing for contemporary societies.

1. Convergence of Distinct Views.

From a blanket view, the domains of sociology, political sciences and law seem to be distinct from one another. Insofar as it is the analysis state policy regarding a certain issue, political sciences differ from sociology which is the study of the dynamics of a society as they take place through individual behavior. In addition, both differ from law, which focuses on the boundaries drawn, by the law, for state action and individual behavior.

[39] *Ibid*.

Nevertheless, the distinctions in the research questions posed by each discipline seem to be a difference of standpoint rather than substance. Commenting one issue on different dimensions yields to different results and conclusions, proper to each dimension, even if the commented issue is one only. For example, studying individual religious freedom requires dwelling on the practices carried out by individuals when making use of their freedom, whether individually or collectively. It requires dwelling on how the state and its institutions, including political parties integrating the Parliament, relate to the practices thus observed. It requires, eventually, to examine whether these religious practices fall under the categories of religious freedom as defined in the law. In other words, it requires to examine whether the practices laid out by sociology can be qualified as 'religious' in the meaning that law gives to it, and what stance the state adopts when facing them.

Political sciences investigations on state policy regarding religious minorities, on the corresponding political and media discourses, on the shift towards the Judiciary in the regulation of social issues amounts to investigating individual religious freedom, as manifested in society, through the lenses of state actions. Sociological studies on the social perception of the religious freedom, on the contemporary forms of religiosity, on the evolution of religious practices and on the role taken by religious institutions amounts also to studying, more comprehensively, the individual use of religious freedom. It amounts, in other words, to studying how individuals make use of their religious freedom. Eventually, legal developments on religion determine the framework within which the latter use falls. Hence they seek to examine whether individual behavior, the one intended as religious by the individuals who adopt it, actually fits the contours of religious freedom as sketched by the law, and can therefore be admitted as an expression of religious freedom. Legal developments impact the content of the law, thus that of individual religious behavior, by settling what individuals can do when behaving religiously, what practices can be admitted by the law and which ones do not fall under its protection.

As this example of individual religious freedom indicates, all the questions animating religious scholarship seem to actually amount to a narrow set of issues. Once deconstructed and decomposed, the said issues give way to a smaller set of questions, proper to each

discipline. In other words, the religious micro-issues which make the field of research of each discipline taken independently seem to be the result of a distorsion caused by the particular focus of each one of them. It is the consequence of this heuristic distortion that the two major themes at the heart of religious scholarship—namely individual religious freedom and religious diversity—give way to the variety of approaches and research questions that each discipline tackles within its own sphere.

Studying religion calls, therefore, for integrated studies of the three disciplines. The interest of this integration lies in the fact that their findings shed light on those of each other, thus providing a more comprehensive understanding of each issue, its underpinnings and outcomes. Such a decentralization, and complexification, of the approach towards religion is, indeed, more likely to provide an in-depth understanding of the phenomenon.

For example, one of the most pressing questions in contemporary religious scholarship is that of pluralism. That is, the exercise of the individual right to religious freedom in a context of increasing religious affiliations within society. If the topic appears, *prima facie*, as a legal topic for questioning the individual believers' capacity to act religiously, its study requires a precise assessment of the individual practices concerned, as well as that of elements regarding the social configuration in which they take place. This social configuration allows, *in fine*, to examine how they are received by society and the extent to which they can actually be performed therein. In other words, in order to determine how pluralism is crafted, in law and policy, it is necessary to have sociological findings regarding the social context in which pluralism is to be enforced. Furthermore, the stance of the state, through the agents and institutions that compose it, is also paramount for grasping the dynamics of pluralism within a given society. In short, pluralism appears to be, from all standpoints, one of the most pressing issues for contemporary societies, for engaging the deepest considerations that they can have, which often transcend the area of religion *stricto sensu*.

2. Religious Pluralism and contemporary societies.

Recognizing freedom of religion and belief is recognizing an individual right for any person to adopt beliefs of their own. As a human right, this right is meant to be granted to each and

every individual, in each and every society, as long as the said beliefs "attain a certain level of cogency, seriousness, cohesion and importance"[40]. In one of its major cases regarding religious freedom, namely *Kokkinakis v. Greece*[41], the European Court of Human Rights explained that this right is "one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, sceptics and the unconcerned"[42]. Then it added: the "pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it"[43].

Furthermore, the right does not circumscribe to the intellectual dimension of holding beliefs solely. It also bears a practical dimension, as enshrined in its 'manifestation' clause: that is, the right to manifest the beliefs that one holds through practice, either publicly or privately, individually or collectively[44]. So much so, granting the right to freedom of religion and belief is also granting the right to act by, exercice and practice what these beliefs entail. In other words, the state's obligation to guarantee a right to believe comes with a parallel obligation to admit and guarantee the practices that the said beliefs entail. The regulations that a state can enact in order to prohibit the manifestations of a belief are limited in both their number and their scope. These limitations have to be enacted by law, on grounds of public heath, public order, public safety, public morals, or in order to preserve the rights and freedoms of others[45]. Commenting on the "morals" prohibition clause, for example, the Special Rapporteur on article 18 of the International Covenant on Civil and Political Rights contended that "it is

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[40] *See*, *inter alia*, ECtHR, Chamber, 25/02/1982, *Campbell and Cosans v. United Kingdom*, Applications n° 7511/76 and 7743/76, para. 36; HRC, Adoption of views, 13/07/2017, *Alger v. Australia*, communication n° 2237/2013, para. 6.5; HRC, General Commentary 22, CCPR/C/21/Rev.1/Add.4, 27/09/1993, para. 2.

[41] ECtHR, Chambre, 25/05/1993, *Kokkinakis v. Greece*, Application n° 14307/88, para. 31.

[42] *Ibid*.

[43] *Ibid*.

[44] In this founding judgment of its religious jurisprudence, the ECtHR contends that "[w]hile religious freedom is primarily a matter of individual conscience, it also implies, inter alia, freedom to 'manifest [one's] religion'". *Ibid*., para. 31.

[45] Article 18.3 ICCPR; article 9.2 ECHR; article 12.3 ACHR, etc. The Human Rights Committee has explained that "[a]rticle 18.3 permits restrictions on the freedom to manifest religion or belief only if limitations are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others". *See*, HRC, General Commentary 22, para. 8. Then, in its jurisprudence, such as in HRC, Views, 26/08/2005, *Sergueï Malakhovsky and Alexander Pikul*, communication n° 1207/2003, para. 7.3, the HRC added that "limitations may only be applied for those purposes for which they are prescribed and must be directly related to and proportionate to the specific need on which they are predicated". Going a step further, the European Court of Human Rights enshrines the said limitations in a framework which adds the necessity that they be "necessary in a democratic society". *See*, *inter alia*, *Kokkinakis v. Greece,* paras. 36-50.

important to bear in mind that the Human Rights Committee has argued for a pluralistic understanding"[46] thereof. In other words, to guarantee the right to freedom of religion and belief to all individuals in all social contexts is the primary objective; its limitation remains the exception and is therefore meant to be as parsimonious as possible.

As a result, the right to freedom of religion and belief entails a pluralistic regulation of religion in society[47]. It bears religious pluralism in its very core. Since the right provides for every individual the freedom to adopt any belief as much as to act by it, practice its teachings and manifest it in society, it instaures an obligation for states to acknowledge the existence of the said beliefs, regardless of their actual content or to what extent they may be new[48]. And, as a consequence, they have the obligation to guarantee their adepts with the freedom to practice their teachings—provided, as explained, that the latter do not clash with the limitation clause.

Therefore, the right to freedom of religion or belief is a guarantee for every individual to freely adopt any belief, to freely embrace any idea, with the corresponding freedom to translate it into practice. As long as the said practice does not come at odds with public order, international human rights law makes its guarantee a state obligation.

The central issue, therefore, lays in the use of the limitation clause, and more precisely in the understanding of the grounds of limitation that it exposes: public order, public safety, rights

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[46] UNGA, Declaration on the Elimination of all forms of religious intolerance, 13 August 2012, A/67/303, para. 57.

[47] The Special Rapporteurs on article 18 ICCPR has stressed this need for a pluralistic system, in the regulation of religious and other beliefs, in many of its reports to both the Human Rights Council and United Nations' General Assembly. *See*, *inter alia*, UNGA, 28 August 2017, Declaration on the Elimination of all forms of religious intolerance, A/72/365, paras. 57, 77-78, 84; Human Rights Council, Report of the Special Rapporteur on freedom of religion and belief, 28 February 2018, A/HRC/37/49, paras. 29, 89; UNGA, Elimination of all forms of religious intolerance, 2 August 2016, A/71/269, paras. 34, 52; UNGA, Report of the Special Rapporteur on freedom of religion or belief, Heiner Bielefeldt, 24 December 2012, A/HRC/22/51, paras. 26, 82; UNGA, Elimination of all forms of religious intolerance, 13 August 2012, A/67/303, paras. 54-57; UNGA, Elimination of all forms of religious intolerance, 18 July 2011, A/66/156, paras. 17, 54-56.

[48] HRC, General Commentary 22, para. 2. The European Court of Human Rights, for its part, makes it prohibited for states to value-assess the content of any religion. In *Manoussakis v. Greece*, it states indeed that "[t]he right to freedom of religion as guaranteed under the Convention excludes any discretion on the part of the State to determine whether religious beliefs or the means used to express such beliefs are legitimate". In *Hassan and Tchaouch v. Bulgaria*, it states that "but for very exceptional cases, the right to freedom of religion as guaranteed under the Convention excludes any discretion on the part of the State to determine whether religious beliefs or the means used to express such beliefs are legitimate". *See* ECtHR, Chambre, *Manoussakis v. Greece*, 29/09/1996, Application n° 18748/91, para. 47; ECtHR, Grand Chamber, 26/10/2000, *Hassan and Tchaouch v. Bulgaria*, Application n° 30985/96, para. 78.

and freedoms of others, etc. According to the way they are conceptualized, these grounds lead to a specific assessment of the realties they confront, and hence specific sets of regulations to face the latter. According to what could be the concrete factual situation that they are meant to foster, they indicate specific regulations to adopt in front of the realties at hand. In other words, on the conceptual level, these grounds are polysemic notions, which need to be further interpreted before being applied. Their application rests, and depends, on an ideal situation, of a factual nature, that they embody. That factual situation serves as a premise for their application, that is, their development through regulation.

The ground of public order, for example, has not been defined by human rights treaties and conventions, nor, in fact, by the courts and bodies in charge of the latter's application. Even the scholarly works clarifying its meaning and scope appear to be quite scarce, and point to an interpretive void within the notion[49]. This lack of official definition deprives the concept of any objectivity, leaving the burden of fixing its content, its meaning, and its scope to each state individually. Given it point to a sort of ideal factual situation whereby order reigns within society, its application depends on the state's understanding—or conceptualization—of the latter situation. Therefore, its application tends to depend on each state's historical trajectory, meaning its society's traditions, history, and social configuration[50]. In essence, public order seems to be this ideal state of fact that public authorities seek to engender through the legal regulations they enact. A state of fact of absence of tension, clash, danger or conflict. A situation where social forces balance each other without causing prejudice to people's safety. In short, an established or ideal social order reigning within society, that ruling authorities seek to engender through laws and regulations.

Henceforth, an inherent tension appears to lie within the process of application of the right to freedom of religion and belief. On the one hand, every belief—and practice thereof—which

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[49] GUNATILLEKE (G.), « Criteria and Constraints: the Human Rights Committee's Test on Limiting the Freedom of Religion or Belief », *Religion and Human Rights*, 15, 2020, p. 24; GUO (Z.), « Public Order as a Protectable Interest », *Legal Studies*, Volume 41, No. 2, June 2021, p. 1.

[50] As Z. Guo argues, seeking to materialize public order "does not mean focusing on the protection of welfare interests in the sense of basic living safety, but extends to respect for convenience, comfort and peace conditions for smooth life". *See*, GUO (Z.), « Public Order as a Protectable Interest », p. 8. In other words, public order is an ideal state of fact, which serves as a "measure of peace and observance of basic value patterns of a culture upon which the fruitful pursuit of legitimate interests in [a] given society depends". *See*, GUO (Z.), « Public Order as a Protectable Interest », p. 1.

"attain[s] a certain level of cogency, seriousness, cohesion and importance"[51] enjoys the guarantees that the right provides. On the other hand, the practice of the said belief should not contravene the established social order within a society, for it could find to be prohibited. In other words, every belief—and practice thereof—is protected, regardless of whether it is new or corresponds to any traditional religion evolving within society; but, at the same time, it must not hamper the established social order reining within the said society[52]. A tension that seems to lie in the legal provision itself, and therefore puts into inquiry the idea of pluralism that lies in its heart.

As explained *supra*, the transformation of the religious experience and the dynamics of globalization seem to be the root causes of the growing religious diversity that animates domestic societies around the world. Due to the migratory streams and the mutation of religiosity in contemporary societies, beliefs, religions and religious practices appear to be continuously crossing borders, moving from one society to another around the globe. Therefore, leaving the issues of pluralism and diversity regulation unclarified, unquestioned, results in further issues in relation with the right to freedom of religion and belief. First, the right does not reach the level of protection intended, as it leaves the members of diversity in a blurry area regarding the legal boundaries surrounding religious practice. Second, it leads to a situation where some beliefs and practices may enjoy the protection of the right to freedom of religion or belief in one society while being forbidden in another, simultaneously, and on the

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[51] *See*, *inter alia*, ECtHR, *Campbell and Cosans v. United Kingdom*, para. 36; HRC, *Alger v. Australia*, para. 6.5; HRC, General Commentary 22, CCPR/C/21/Rev.1/Add.4, 27/09/1993, para. 2.

[52] Such cases have lead to several case law before international human rights bodies and domestic courts of law. For example, in the above-mentioned HRC, *Prince v. South Africa*, the South African Supreme Court ruled that, even though he was a Rastafarian, the prohibitions Mr G. A. Prince was facing were lawful. After communicating the case to the Human Rights Committee, claiming a breach in his right o freedom of religion and belief, the Committee recognized that the consumption of the narcotic substances at stake was part of Mr G. A Prince's religious practice, but nevertheless confirmed the prohibitions issued on on safety, health and moral grounds. In other words, despite using narcotic substance was recognized a religious practice, it contravened the established public order in such a way that it could not be authorized. Similarly, some manifestations of Islam, in today's Europe, are considered alien to the established value order if the latter, and henceforth prohibited with basis on article 9 of the European Convention of Human Rights. For a deeper assessment of this issue, *see* Decision of the ECtHR, Second Section, 15/02/2001, *Dahlab v. Switzerland*, Application n° 42393/98; ECtHR, Grand Chamber, 10/11/2005, *Leyla Şahin c. Turkey*, Application n° 44774/98; ECtHR, Third Section, 10/01/2017, *Osmanoğlu and Kocabaş v. Switzerland*, requête n° 29086/12; CHAIBI (M.), *L'Islam dans la jurisprudence de la Cour Européenne des droits de l'Homme*. The same can be also said of Islam and Falun Gong in China, the Latter Day Adventists in the United States of America, etc. *See*, WRIGHT (S. A.), *ed.*, RICHARDSON (J. T.), *ed.*, *Saints under Siege. The Texas State Raid on the Fundamentalist Latter Day Saints*, New York, New York University Press, 2011, 270 p. Each time a religion or a religious practice comes to contradict the established social order of a society, be it in terms of values, it seems to undergo restrictions—either by the governing authorities, or by the way of court judgments when it reaches the courts level.

same legal grounds. One example of this latter consequence is that of the use of prohibited substances for religious purposes. For example, the South African Supreme Court, and later the Human Rights Committee of the United Nations, validated prohibition measures issued by South African authorities against a barrister, thus preventing him from consuming specific products for religious purposes[53], whereas similar religious practices were admitted by the Supreme Court of the United States of America[54], and appear to be fully admitted in some Latin-American societies—at least regarding certain substances[55].

Clarifying the issue of pluralism in international human rights law would shed more light on the substance of the right to freedom of conscience and belief. It would bring more precisions regarding the substance of the right, on how to enforce it, and consequently clarify the meaning of public order, and other related grounds, in international human rights law. Furthermore, it would assist lawyers, judges, and policy makers in enacting the suitable regulations to guarantee the right's respect.

Being "the normative-regulatory"[56] system applied to diversity, which is a sociological reality, pluralism is endowed with a legal (or policy) dimension, sociological bases, and an ideological *substratum*. Each one of these three elements completes the two others, so much so understanding the issue of pluralism in a given society calls for a multi-disciplinary

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[53] *See* HRC, *Prince v. South Africa*, Mr Gareth Anver Prince was seeking to perform the mandatory community service needed for qualifying as an attorney at law. The South African law made such a community service necessary, indeed, after the fulfillment of the academic requirements. Therefore, he applied to several bodies in which he could execute this obligation, but all his applications were rejected due to him holding a criminal record. Mr G. A. Prince was an adept of Rastafarianism, a religion which rests on consumption of a narcotic substance. His criminal record was thus holding the offenses of possessing and consuming drug substances. As the South African Supreme Court ruled that the prohibitions to which he was subject were lawful, given said consumption was a criminal offence, Mr. G. A. Prince communicated the case to the Human Rights Committee, claiming a breach in his right to freedom of religion and belief. The Committee, assessing the case, recognized that said consumption was a religious practice, in the meaning of article 18 of the International Covenant on Civil and Political Rights, but nevertheless confirmed the prohibition on the grounds of safety, health and moral. In other words, despite using narcotic substance was recognized as a 'manifestation' of his belief, it contravened public order in such a way that it could not be authorized by the authorities—including the South African Judiciary and the Human Rights Committee. The interest of this case lies that the same cases took place in other societies, put at stake the same set of rights, and yet gushed forth in distinct results. *See infra*.

[54] *See*, *inter alia*, the developments of the *Peyote Case* before the Supreme Court of the United States in RICHARDSON (J. T.), *ed.*, *Regulating Religion. Case Studies From Around the Globe*, New York, Kluwer Academic/Plenum Publishers, 2004, pp. 535-553.

[55] Substances such as Ayahuasca, for corresponding to the practices of traditional indigenous religions in the continent.

[56] GIORDAN (G.), *ed.*, PACE (E.), *ed.*, *Religious Pluralism*, p. 1.

analysis bringing together the three main disciplines in charge with religious scholarship—sociology, law, and political sciences. Sociology, indeed, describes the actual state of society, and hence provides a concrete image of its religious landscape. Law analyses, for its part, the legal means through which the state confronts this diversity. Political sciences, eventually, provide the political/ideological premises of the pluralistic normative system considered—taking into account the contextual features of its application.

With this tridimensional analysis, a complete understanding of the pluralistic system conveyed by the human right to freedom of conscience and belief can be achieved. Indeed, it allows for the sociologist to better understand the evolution of religiosity and religion itself as a social force which is subject to various influences—including that of state regulations. It allows for decision makers to elaborate policies which be more suitable to the realities that they intend to manage. It allows for legal practitioners to better guarantee religious freedom for individuals in the contemporary context of increasing diversity within domestic societies.

III. Religious Pluralism within International Human Rights Law.

The present research dwells on religious pluralism within the framework of the international human right to freedom of religion and belief. As explained *supra*, by the fact that it is a constantly growing and complex phenomenon, religious diversity tends to constantly bring forth questions of regulation (1). These questions seem to gravitate around pluralism, which becomes an area of research of its own.

Being an area of research of its own, pluralism conveys a multiplicity of angles, perspectives, dimensions and methodologies of investigation in all social sciences involved. Thus, the present research focuses on the pluralistic system that is at the heart of the international human right to freedom of religion and belief. It seeks, in other words, to explore which pluralistic system the latter right conveys. It is, therefore, a legal research with a multi-disciplinary focus, which brings together sociology, law, and political sciences with the aim of settling what is the legal framework that emanates from the international human right to freedom of religion and belief when it comes to regulating religious diversity.

Inasmuch as it does so, the present research parts from the premise that the regulation of pluralism applies to a specific jurisdiction. It regulates a specific society. However, given the said regulation is set by jurisdictional (or quasi-jurisdictional[57]) organs, it posits, as a hypothesis, that the latter tend to focus on the law and attribute little importance to the social context in which the latter applies[58].

Eventually, being a multidisciplinary research, it obeys to a specific methodology that brings the three mentioned social sciences together (2), locates each issue raised by religious pluralism within its own field, and, through a combined reading of all the latter, parts from society to understand the law that is supposed to regulate it (3).

1. The research topic: religious pluralism in international human rights law.

As briefly stated *supra*, religion and society are at the centre of wide-ranging questionings, constantly renewed and constantly reframed. Furthermore, not only do they engage all social sciences, but they also raise issues which are at the confluents of each other. As an illustration, the issues raised by freedom of speech in multi-religious and multi-cultural contexts, the organization of religious congregations, the link between religion and citizenship—especially within the framework of 'culture' as a secularized projection of religion—and the practice of religion in multi-religious contexts all represent new areas of research based on religion and society. In addition to their novelty, they all engage various social disciplines at the same time, and thus seem to command multi-disciplinary methodologies for their investigation.

One of these central themes is also that of religious diversity. Or, more precisely, the religious diversification of societies, its underlying logics and impact, as well as its regulation. Indeed, the flow of transportation and communication, which carries information and ideas with it, is continuously accelerating at the global scale. The world is more connected, more interconnected, and more reachable for both people and ideas. Henceforth, as much as

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[57] *See*, *infra*, Part I—Chapter 3—II—2. A legitimacy issue.

[58] This hypothesis will be tested as assessed thoroughly through Part I, which lays the law of pluralism in three jurisdictions, and Part II, which confronts the said regulation to the field reality. This confrontation, indeed, will show to chat extent the social structuration of society may be relevant for the organs in charge of elaborating the law of religious pluralism.

individuals do, ideas and concepts and cultures and religions and ways of life travel—in both ways. They are imported, meaning embraced by people living in the geographic areas where they did not exist or very little did; they are exported, either by migrating people or through the information ties linking the most diverse parts of the world[59].

Through the same canals as for ideas and cultures and ways of life, religions travel around the world and come to be increasingly present in parts where they would have once been present on the margins only[60]. For example, traditional religions—such as Islam, different branches of christianity, and Hinduism and Confucianism—appear to be increasingly present in parts of the world which are outside their area of origin. The religious landscape of domestic societies sees its part of traditional religions augmenting with time. In addition, new religious movements are constantly coming to existence[61]. As a consequence, domestic societies are constantly diversifying on the religious dimension. Their religious landscape appears as an increasingly colorful mosaïque once mainly painted in one single color.

Such as scale of diversification puts an emphasis on religious diversity as an issue to explore for the religious scholarship of each discipline of social sciences. Furthermore, given its very nature, it seems to call for integrated multi-disciplinary researches to be carried.

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[59] LIOGIER (R.), « Identités globales et religion à l'ère digitale: vers les Global Identity Studies », *Social Compass*, 2020, Vol. 67(4), pp. 557-559, 562-563.

[60] In Latin America, the process is qualified as "religious pluralization from within", insofar as, according to the authors of the study, it is more detached from migration than in Europe and North America. *See*, MORELLO SJ (G.), ROMERO (C.), RABBIA (H.), DA COSTA (N.), « An enchanted modernity: Making sense of Latin America's religious landscape », *Critical Research on Religion*, Vol. 5(3), p. 318. The same pluralization is described in post-communist Prague in HAVLÍČEK (T.), KLINGOROVÁ (K.), « City with or without God? Features of post-secularism in religious landscape of post-communist Prague », *Social and Cultural Geography*, 19:6, 2017, pp. 806-808. In North America, Canada specifically, the same augmentation can be observed. *See*, BEAMAN (L. G.), « Religious Diversity in the Public Sphere: The Canadian case », *Religions*, 8, 2017, p. 260. BOUMA (G. D.), HALAFOFF (A.), « Australia's Changing Religious Profile—Rising Nones and Pentecostals, Declining British Protestants in Superdiversity: Views from the 2016 Census », *JASR*, 30.2, 2017, pp. 131-133 shows the evolution of the Australian religious landscape, throughout a century, which highlights an important rise in nones and other religions. In the case of the city of Melbourne, more precisely, BOUMA (G.), ARUNACHALAM (D.), GAMLEN (A.), HEALY (E.), « Religious Diversity through a super-diversity lens: National, sub-regional and socio-economic religious diversities in Melbourne », *Journal of Sociology*, 00(0), 2021, pp.1-19 describe a "diversity of diversities". For an input on Chinese society, *see*, YANG (F.), *Religion in China. Survival and Revival Under Communist Rule*, New York, Oxford University Press, 2012, pp. 93-95, 103-105.

[61] This tendency will be further developed *infra*, in Part II—Chapter 1. Patterns of postmodern religiosity.

Henceforth, while the present research dwells on the legal treatment of religious diversity in international human rights law, it considers the latter treatment from the perspective of three disciplines, and intends to bring together these three perspectives in order to better understand the regulations governing religious pluralism in international human rights law. For its place within the hierarchy of noms, international human rights law represents the basis of domestic law in the area of human and fundamental rights. Thus, to explore the guarantees provided for religious freedom within the domestic contexts parts from an exploration of the guarantees provided for the latter by international human rights law. By principle, domestic law cannot violate international law; it tends, therefore, to be a development of the latter within the domestic context.

From this perspective, the legal regulation of religious diversity stems firstly from the one adopted at the international level. More precisely, from the regulation set by the international courts and treaty bodies in charge of interpreting the individual right to religious freedom. In fact, this regulation seems to be the projection, on the existing religious diversity, of the guarantees provided by the international human right to freedom of religion and belief. Consequently, the international framework set for regulating religious diversity is the basis from which the preset research parts. The central hypothesis at the heart of the research revolves around it.

2. The hypothesis of research.

At the outset of the research, the hypothesis is that the international courts and treaty bodies in charge of interpreting and applying the right to religious freedom do not integrate, in their hermeneutics, the patterns of the contemporary religious experience or the context in which it is exercised. In other words, when setting the interpretation of the right to religious freedom, or when examining a case of violation of the latter, the said courts and treaty bodies do not take into account the wide context in which the violation happened. The sociological data describing the latter do not integrate the hermeneutics of adjudication and case examination. Thus, these courts and treaty bodies do not examine the claims and arguments raised by the parties, whether the applicants or the defending states, in light of the social context in which the alleged violation took place. In this view, the application of the right proceeds from a top-

down approach, which focuses almost exclusively on the legal principles, and does not take into account the established social order in which the right comes to be applied. It does not, therefore, consider the social consequences of the right, its impact on the society in which it is applied.

In light of the current dynamics of religiosity and the wave of diversification that domestic societies seem to be undergoing, such a way of proceeding tends to raise two issues. First, it leaves unconsidered the social impact of the religious practice—that is, its impact on the individual believer who embraces it, as much as its impact on the organization of society. Second, it does not consider the state's capacity to ensure the institutional conditions for the right to be applied. Indeed, some religious behaviors require specific settings of a social nature to be performed, others require settings of an institutional nature, and others may even require both.

In order to face these situations, the treaty provisions where the right to religious freedom is enshrined also provide a clause under which states can lawfully limit the exercise of the said right. The said limitation clause makes reference to public order, public safety, public morals and the rights and freedoms of others as potential grounds of limitation. But, as explained *supra*, these limitation grounds refer to factual, often ideal, states of fact. In other words, they represent realities of a sociological nature, whose (conceptual) content may vary from society to another. Following, their legal consequences may also vary from one social context to another. Being that so, these limitation grounds represent sociological realities, internalized by the agents in charge of applying the limitation clause as premises for the said application.

Indeed, these limitation grounds are not defined in the law. Nor are they described in such a way as to guide the application of the limitation clause—especially to religious diversity. In other words, they are not formalized as legal principles, nor as guiding principles for the interpretation of the right to freedom of religion and belief. Therefore, for referring to ideal factual situations based on which the limitation clause can be applied, they only integrate the interpretation of the right to religious freedom indirectly, through the image they set in the minds of those in charge of interpreting them when applying them.

Henceforth, the sociological context of application of the right to religious freedom seems to be absent from the heuristics presiding over the latter's application. It does not appear in the legal reasoning adopted during the adjudication of the case. It does not seem to integrate the legal reasoning guiding the application and the interpretation of the right to religious freedom. It is not taken into account by the agents in charge of setting the latter. Therefore, the present research is lead with the hypothesis that the current application of the right to religious freedom seems to proceed from a top-down approach, which focuses on the law and the legal principles without due regard to the sociological aspects revolving around society and the expression of religious diversity. As a result, it tends to limit the expression of religious freedom, and does not allow for the law to match the constant evolutions of the latter.

More precisely, the hypothesis at the basis of this research is that the current international legal frameworks regulating religious pluralism do not include, in the hermeneutics at their bases, any consideration on the 'established social order' of society. When the limitation grounds refer to ideal sociological realities that legal regulations seek to engender, the existing order that may structure a society at the time where these regulations are adopted seems to be irrelevant. Were these sociological features integrated to the said hermeneutics, the legal framework that would govern religious pluralism, as dictated by the right to freedom of religion and belief, would change. It would evolve from a top-down to a bottom-up approach, that parts from society and seeks to guarantee the right to religious freedom parting from the sociological characteristics of its context of application. In other words, integrating this sociological dimension to the regulation of religious pluralism would allow to accompany the constant changes of society at the same time as it would ensure the highest degree of religious freedom for individual believers. Indeed, the heart of religious pluralism seems to li in the use of the restriction clause, which refers, in turn, to some sort of dialectics taking place between religious expression and social order.

3. Methodology of research.

In order to examine the hypothesis set in the above lines, the research will proceed in two steps. First, it will set precisely the legal configuration applicable to religious diversity (A),

which it will confront to the actual dynamics of contemporary religiosity (B). That is, to the traits of contemporary religiosity as brought forth by sociology. Then, if the international legal frameworks for religious pluralism prove, indeed, to be top-down approaches which do not include the established social order in their hermeneutics, the research will proceed to this integration and explore the changes of framework that would result from this integration (C).

A. The law: More precisely, the first part of the thesis will lay the international regulation of religious pluralism. It will lay the legal frameworks governing the latter. For that purpose, it will analyze the judgements and Views, issued by the international courts and treaty bodies regarding the right to freedom of religion and belief. Judgments and Views are the fruit of a confrontation between different claims over the right to religious freedom. What is more, this confrontation arises from a specific set of facts, in a way that each litigation gives way to a specific regulation that applies to the topic that it concerns. Being so, the legal framework of a given right is spread in the judgements issued on the latter. Therefore, the present research will focus on the judgements and Views issued on the right to religious freedom, with view to systematizing all the legal structures that the judgments contain. In other words, the research will gather the developments made by international courts and treaty bodies on the right to freedom of religion and belief, as laid in the judgements and Views that they issue, and will seek to systematize them in a way as to yield in the legal framework that they materialize. Applied to religious diversity—that is, for example, to different manifestations of the right to religious freedom—, the framework thus obtained will in turn draw the contours of religious pluralism.

In doing so, the research will consider each organ separately. Being on the same level in the hierarchy of norms, being the applicants of different treaties and counting with a different set of member-states, each of the organs examined has a proper jurisdiction. The judgments that each organ issues are applicable within that jurisdiction only, and may consequently materialize a different kind of pluralism.

Also, the research will focus on those judgements and Views endowed with a ‘social’ dimension. More precisely, as a set of regulations, religious freedom has several dimensions

which include individual behavior in society, treatment of religious minorities and communities, public education and teachings, the exercise of religious rights in specialized institutions—which, by their very nature, limit individual freedom—such as prisons and hospitals, rules applicable within religious associations endowed with legal personality... As the present research focuses on how religious freedom is regulated in society, it examined the dialectics between society and religious freedom in a context of religious diversification. It considers the religious condition of individuals as members of society[62], hence the focus on the 'social' dimension of the right to religious freedom. In other words, the research explores the legal framework of religious freedom as the latter is lived and exercised by individuals in society—that is, where it receives its largest expression[63].

The different systems of regulation will then be expressed in the framework of the Religious Economy Model, which tends to give a clear image of the impact and the dynamics that any given system of religious pluralism has on society. Then, these dynamics will be confronted to the existing religious diversity and its own dynamics, as they are portrayed by sociological scholarship.

B. The society: In order to explore the impact of measures aiming at regulating specific realities, the former have to be confronted to the latter. In other words, the law has to be confronted with the characteristics of its object of regulation, and with the field in which it applies. Then, from the said confrontation, conclusions can be made on whether the law fulfills the objectives it has been set to apply.

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[62] The religious condition refers to the ability of individuals to embrace and practice their beliefs, whether they stem from religions *stricto sensu* or a-religious spiritual or philosophical beliefs. The terms 'religion' and 'belief' are equivalent in international human rights law. *See*, *inter alia*, ECtHR, *Campbell and Cosans v. United Kingdom*, para. 36; HRC, *Alger v. Australia*, para. 6.5; HRC, General Commentary 22, CCPR/C/21/Rev.1/Add.4, 27/09/1993, para. 2.

[63] Specific contexts such as specialized institutions, army or prisons, are therefore outside the scope of the research. The latter contexts obey to distinct dynamics which raise, from the viewpoint of religious freedom, issues of a distinct nature. Their proper features entail that religious freedom be adapted to their specific configurations and purposes. Consequently, resulting issues upon religious freedom evolve around their nature as institutions and their proper requirements, rather than pluralism or religious freedom in society as such. The example of conscientious objection, for instance, illustrates abundantly this idea. This issue concerns less pluralism in society as such than the obligation to abide by state law, equality of treatment between citizens, sovereign powers of states regarding national defense, and the exercise of religious rights before state sovereign institutions. The issues at the heart of the litigations revolving around conscientious objection are, by their very nature, aside the realm of religious pluralism in society—and even society itself. They impact the latter only indirectly, marginally, and in their specific circumstances.

Assessing the characteristics of the field reality is the task of sociological, qualitative and quantitative, methods of research, involving statistics and models and representative samples. Therefore, settling the characteristics of religious freedom, intended as sociological developments of the right to religious freedom through individual behavior, requires to explore how individuals behave in society when behaving religiously. It requires to explore what are the practices that individuals proceed to, in execution of priorly adopted ideas revolving around life and death, life in society, the nature of reality and that of the human being… In short, it requires the exploration of what people do, when they execute, in practice, those of their beliefs that "attain a certain level of cogency, seriousness, cohesion and importance"[64]. In the terms of sociology, it requires to approach sociological data from a socio-constructivist approach.

Therefore, this research will rely on the existing (mainly socio-constructivist) sociological works revolving around religion, the religious experience and religious freedom. From these works on the expression of religion in society, it will first seek to explore the patterns of the individual religious experience. That is, how individuals, in contemporary societies, live their beliefs; how they manifest them in society; how they behave when they behave religiously. In other words, it seeks to determine the concrete characteristics of the religious lived experience, from its elaboration in the individual mind to its expression in daily life. Such a focus on the individual experience will be likely, by the token of the samples and themes selected by the studies, to materialize the patterns of the lived religious experience.

Then, the aim being that of confronting these patterns to those of its regulation, it will also explore the reception of the lived religious experience by society. More concretely, it will dwell on the perception of religious freedom. That is, the perception of religious acts and behaviors by the other members of society.

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64 *See*, *inter alia*, ECtHR, Chamber, 25/02/1982, *Campbell and Cosans v. United Kingdom*, Applications n° 7511/76 and 7743/76, para. 36; HRC, Adoption of views, 13/07/2017, *Alger v. Australia*, communication n° 2237/2013, para. 6.5; HRC, General Commentary 22, CCPR/C/21/Rev.1/Add.4, 27/09/1993, para. 2.

In more concrete words, the research will proceed in three steps. First, it will explore the religious experience as it emanates from individuals, starting with the way the latter frame it in their *forum internum*. Parting from there, it will consider how they manifest it into society through acts and behaviors, in the individuals' *forum externum*. From this end, the research will explore the sociology of religious freedom as it emanates from individuals themselves. Then, it will explore the perception of these acts and behaviors by the other members of society, in an effort to determine the normative narrative that society applies to them. From this end, the research will explore the reception of religious freedom by society, especially as it emanates from individual and group social interactions, from normative narratives such as media treatment, and from the organization of religious groups and communities.

According to how it appears from these two ends, the exploration of the religious lived experience will materialize the patterns of contemporary religiosity as it takes place within its context of existence. It will, thus, identify the role of the established social order in the manifestation of religious freedom—and thus settle whether the established social order has any impact on the said manifestation.

Accordingly, the research will put the legal regulation of religious freedom in front of the various issues that the latter has to face. Issues regarding both individuals—in relation to the acts and behaviors they seek to adopt—and groups and communities—which concerns the ties that link state with the latter, often referred to as 'state and Church relationships'.

In other words, once the image of religiosity, as it takes place within society, is settled according to the sociological works carried thereon, the research will confront it to the legal regulations making religious pluralism. It will seek to determine the role of the established social order on the development of religious freedom in daily life. Therefore, after systematizing both the law and the sociological characteristics of religious freedom, it will explore the role of the established social order in the development of religiosity in daily life, consequently raising the potential inconsistencies of the law in managing religious freedom and religious diversity.

Based on that confrontation, if inconsistencies appear between the two, the research will 'test' whether these inconsistencies arise from the hypothesis set *supra*: the non-integration of the established social order in the legal hermeneutics of religious pluralism. If the test proves to be positive, the research will proceed to integrating the established social order to the said legal hermeneutics and consequently explore what type of religious pluralism emanates therefrom.

C. The law through society: Integrating sociology to the legal hermeneutics supposes a double dialectical process. First, a dialectical confrontation between individual (religious) behavior and the established social order. That is, an examination of the social limits for individual religious behavior, which concerns bathe their identification and the way that they can be identified. Once determined, the second dialectical confrontation can take place, this time with the law, in order to ultimately seek how religious pluralism would look like, in legal terms, when integrating the sociological aspects delimiting its context of application.

In this vein, the research will be mainly structured in three parts. The first Part, as explained, will endeavor to set the international legal framework of religious pluralism (Part I). More precisely, it will explore the regulation emitted by the three main international bodies that have been confronted directly with the right to freedom of religion and belief: the European Court of Human Rights (Chapter 1), the Inter-American Court of Human Rights (Chapter 2), and the United Nations' Human Rights Committee (Chapter 3).

The second Part will be dedicated to the sociological development of religious freedom (Part II). It will proceed with laying the patterns that govern contemporary religiosity in the meaning of lived religious experience (Chapter 1). Then, it will dwell more deeply on the concrete sociological characteristics of it—first on the individual dimension (Chapter 2), then on the more collective group dimension (Chapter 3).

The last Part will then proceed to confronting the first with the second (Part III). For that purpose, it will outline the characteristics of pluralism and diversity, and relocate their relationships within a socio-legal framework (Chapter 1). That is, it will explain the premises

upon which sociology can be integrated into law; or, better said, how sociology and law, conceived as distinct disciplines, converge in a better regulation of the social reality. After setting these premises, the research will proceed to laying a concrete methodology by which to integrate sociology to the legal hermeneutics of religious pluralism, hence sketching the contours of the system that this integration would lead to (Chapter 2). In the end, the obtained methodology will be applied to—thematic—selected examples that will further illustrate its dynamics (Chapter 3).

After the third part, conclusions will be made on the entire research. After recapitalizing its results and findings, it will point to the limitations faced and attempt to make concrete proposals for the further researches to be carried in the field of religious pluralism, especially within the framework of international human rights law.

4. A Further Note on Methodology.

To conduct a scientific research requires to adopt the language of the science involved, its terms, its concepts, its heuristics. Words, terms, and concepts come to have a proper meaning according to the context in which they are used, or the *logos* in which they are integrated[65].

As A. Meillet explains, "[w]hen a word is associated to a definite group of formations, (…) its meaning keeps constance; however, if, for any reason, the group dislocates, the elements that compose it, for no longer holding each other, are exposed to various influences that amount to changing their meaning"[66] [unofficial translation]. In other words, the context in which a word exists, either in relation to a specific phrase or in relation to the common use of it, endows the word with a specific meaning. When the said word ceases to be attached to this given context,

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[65] MEILLET (A.), « Comment les Mots Changent de Sens », *L'Année Sociologique*, Tome 9, 1904-1905, pp. 1-38.

[66] *Ibid*., p. 7. A translation of this article is contained in BAYTHON (A.), *How Words change Meaning*, Independently Published, 2018, 66 p. The data of this opus, as they stand, do not allow the reader to identify whether or not it has been peer-reviewed. Consequently, for scientific purposes, this translation cannot be identified as an official translation of the article cited above—it is not relied on. The original wording, of the French citation, reads as follows: "Tous les changements de forme ou d'emploi que subissent les mots contribuent indirectement aux changements du sens. Aussi longtemps qu'un mot reste associé à un groupe défini de formations, il est tenu par la valeur générale du type, et sa signification garde par suite une certaine fixité ; mais, si par quelque raison que ce soit, le groupe se disloque, les divers éléments qui le constituent, n'étant plus soutenus les uns par les autres, sont exposés à subir l'action des influences diverses qui tendent à modifier le sens".

its meaning changes. Also, the meaning of a word varies depending on the specific field—and the corresponding *logos*—in which it is used, as "[e]ach science, each art, each profession, by composing its terminology puts its own mark on the words of the collective language"[67].

A multidisciplinary research, consequently, requires to adopt the language of each discipline that composes it. Such a requirement can be a source of difficulty (A) and modulates, accordingly, the use of language in accordance with the needs of multidisciplinarity (B).

A. The challenge: As stated, a multidisciplinary research draws its substance from various disciplines. Its content, in terms on ontology, of methodology, and—thus—also in terms *logos*, originates from the various sciences and disciplines that compose it. In fact, one of the core features of multidisciplinary researches is to foster an osmosis between various scientific disciplines.

From a linguistic perspective, such a movement is not devoid of disturbance. Words, and above all scientific terms, have the precise and nuanced meaning that their proper discipline endows them with. Consequently, some terms may be proper to one discipline and non-existent others. In that situation, the said other disciplines may lack the intellectual material necessary to grasp the meaning of these terms in all their nuances. For example, the word 'sociological' is proper to sociology. When it is widespread in sociology, it tends to be absent from other disciplines such as law and political sciences. As a consequence, these disciplines may fall short of grasping the entire and nuanced meaning that the word may have.

More precisely, 'sociological', in sociology, refers to the nature of a phenomenon or the stance taken to observe the latter. It refers to the nature of the phenomenon as a product of society, and hence points to a specific focus in its observation—a focus on the intellectual, individual, social or other mechanisms at the origins of its production in society. In short, a 'sociological' phenomenon is a phenomenon which results from an elaboration, collective or

[67] *Ibid*., p. 14. The original French wording of the quotation reads as follows: "Chaque science, chaque art, chaque métier, en composant sa terminologie marque de son empreinte les mots de la langue commune". As an illustration, the author explains that the activity carried by specific people ends common words with a radically different understanding. An 'operation', for example, carries a different meaning if pronounced by a physician, in which case it tends to designate a surgery, a member of the military, in which case it designate a military operation, a financial agent, in which case it designates movements of capital… *See*, *ibid*., p. 13.

individual, before it appears into society. This nature distinguishes it from realities of a 'social' nature for example. That being said, these differences between 'sociological' and 'social', which can prove to be familiar nuances for a sociologist, can appear as non-existent for a lawyer or a politologist. For the latter, indeed, suffices that the phenomenon at stake be observable in society, given the focus, for them, is its regulation by law or its management by public policy[68].

Along this type of word, proper to one discipline, others can be used in various disciplines but actually entail different meanings. 'Pluralism', for example, is one of these words. Although, as it has been defined *supra*, the word refers to "the normative-regulatory"[69] system applied to diversity, the actual content of the word may vary according to the angle taken to consider it. In other words, each discipline dealing with pluralism endows the concept with a distinct intellectual content. From the legal perspective, pluralism tends to refer to the legal-institutional settings that regulate diversity or take it into account. From the political perspective, it refers to the public policy pursuing the same objective, as much as the political, ideological, or philosophical narratives at the roots of it. From the sociological perspective, it refers to the individual acts, as exteriorized in the various sectors of society, carried when facing diversity—rules within specific private organizations such as sport associations, organizational settings in receiving clients, the proper attitude of the people involved in such contexts regarding the diversity to which they are confronted… In fact, from that perspective, it may even include a psychological dimension, which refers to the individual attitude, as framed within the individual mind, in front of diversity.

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[68] However, the distinction can have a crucial importance in litigation. Considering a fact—a religious manifestation for example—as a sociological reality leads to considering the fact as a production of the individual applicant in the litigation. Its treatment warrants specific considerations on the applicant; the applicant integrates the centre of the litigation and the whole process comes to be graduating around the person of the applicant. Also, the focus being the applicant, the court's reasoning in the case revolves around the applicant as well. This perspective changes radically when the fact at stake is considered as a costal reality, that is, as a reality taking place within society. In that case, indeed, the centre of the focus becomes society as a whole. That is, the fact at the centre of the case come to be relevant only insofar as it expresses a social tendency, which drives other considerations into the litigation and goes beyond the applicant or the parties and their claims. With this perspective, the case at hand tends to become a paragon of that social dynamics that animate society. The perspective is different for treating the case, the stakes are different, and the reasoning for judges to adopt is different also.

[69] GIORDAN (G.), *ed.*, PACE (E.), *ed.*, *Religious Pluralism*, p. 1.

Henceforth, depending on the context in which a word comes to be incorporated, the latter's meaning may be affected. Depending on the *logos* adopted, the meaning of a given word may vary. According to the intrinsic logics of each discipline, whose *logos* is the verbal exteriorization thereof, the meaning of a word may change. Consequently, the issue poses as an added challenge for multidisciplinary studies, whose aim is to bring osmosis between various disciplines and distinct *logos*. Therefore, in order to fulfill this aim, the use of the language has to abide by a proper methodology as well.

B. A methodological resolution: To remedy this disparity of *logos*, the following research will intend to focus on two elements. First, the choice was made to opt for the simplest form of expression in its *exposé*, that still conserves the subtleties proper to each discipline without expressing them in a technical way that would cause confusion among the various individuals exposed to it. Such a simplicity may appear as non-technicality, an impression of low standards in terms of academic linguistics. Instead of opting for technical formulations of technical concepts proper to each discipline, and undergoing the risk of misunderstanding, disinterest, or even that of excluding a large part of the audience exposed to it, the research opted for formulating the said technicalities in more simple ways, in more simple wordings without jeopardizing their actual content and the due precision of academic literature. In other words, the choice was made to express technical concepts in simple ways, so as to include all the audience exposed to the research regardless of its academic background. The emphasis was on including all the diversity of the audience—a form of linguistic pluralism. Linguistic simplicity does not deprive from details, nuances and precision. It is not antonymic with complexity, nor with academic writing standards.

Second, the research will contextualize the terms used to the best extent. That is, when the *exposé* of the research commands the use of a technical word, the context of the latter will be made apparent as much as possible, in order for the global narrative in which it is located to be clear. When the context surrounding a concept and the narrative in which it is included are clear, the meaning of the said concept tends to be clear as well.

Managing linguistic disparities while taking into account the savviness proper to each language can be a difficult task to carry. Its difficulty, furthermore, spreads on both sides—that of the writer and that the reader—for the interdependence relationships that these two actors maintain. The difficulty of the task, as explained, resides in the fact that the research is a multidisciplinary research; as it seeks to operate an osmosis between distinct disciplines, it lays before a mandate to bring together distinct *logos*, and hence take into account the specificities of each one. Paradoxically enough, by doing so, it tends to foster the development of a new *logos*, proper to multidisciplinary researches. And, as multidisciplinary research is an emerging field in social sciences, it may be that a novel *logos* of its own may be emerging equally.

Part I: The International Regulation of Religious Freedom.

Book I: Three main approaches: European Court of Human Rights, Inter-American Court of Human Rights, and Human Rights Committee of the United Nations.

The right to freedom of religion and belief is enshrined in all treaties protecting human rights, with the sole exemption of those treaties who seek to provide specific guarantees such as the Convention on the Rights of the Child (CRC) or the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW). In addition, the provision guaranteeing the right to freedom of religion appears to be framed almost identically in all the said treaties, as it is laid in the same words, follows the same approach, and conveys the same type of guarantees[70].

Furthermore, the mechanisms adopted to control its application by state-parties also tend to be identical in structure. While human rights systems may provide for a variety of mechanisms and special procedures, they tend to rely on two central bodies: a court of justice and a committee. These bodies tend to be the cornerstones for the guarantee of rights and their development, especially when endowed with the capacity to examine individual complaints. By putting the rights in context, in specific situations under specific circumstances, individual complaints are the direct cause for the development of the rights and the concrete guarantees that they entail. For that being so, courts and committees, especially at the regional level, are

[70] While this assertion seems to reflect a fact, some international documents tend to guarantee this right in slightly different forms. For example, the ASEAN human rights declaration states, in paragraph 22, that "Every person has the right to freedom of thought, conscience and religion. All forms of intolerance, discrimination and incitement of hatred based on religion and beliefs shall be eliminated". Likewise, the African Charter on Human and Peoples' Rights states, in its article 8, that "Freedom of conscience, the profession and free practice of religion shall be guaranteed. No on may, subject to law and order, be submitted to measures restricting the exercise of these freedoms". Eventually, the Arab Charter on Human Rights provides, in article 27, that "Persons from all religions have the right to practice their faith. They also have the right to manifest their opinions through worship, practice or teaching without jeopardizing the rights of others. No restrictions of the exercise of the freedom of thought, conscience and opinion can be imposed except through what is prescribed by law". All these provisions resemble each other in terms of words used, approach taken, the content of the right and the role of regulating authorities. However, they are not identical; they seem to bear key differences and hence command further interpretations.

key actors in the development of human rights, and correspondingly the right to freedom of religion and belief.

Even more so, for their proper characteristics, as will be further developed *infra*, the regional human rights courts have the primary role in defining the content of the individual rights at stake and the corresponding state obligations. Through the judgements that they issue, they are in charge of elaborating the different guarantees and state obligations that the rights entail. They are the ones who set the applicable law of human rights within their jurisdiction. The other bodies, mechanisms and institutions, such as the committees and commissions, often remain with a complementary role with more diplomatic traits.

Thus, the primary focus, when examining the regulation of a certain area or a specific right, is that of the judgements issued by the courts. Analyzing religious pluralism, as set by in international human rights law, requires thus to dwell on the regulation of religious diversity issued by human rights courts. It calls for exploring the legal developments made on issues of religious diversity by human rights courts and protect bodies, following individual complaints. More precisely, it requires to explore the judgments issued on the right to freedom of religion and belief, pursuant to individual communications or applications alleging a breach of the right to religious freedom by domestic state authorities. For the nature of the issues they face, these judgements settle the applicable law in the matter, the content of the right at stake, and expose the legal content of religious pluralism within the considered jurisdiction.

In a 2010 article, J. Beckford stated that "'religious pluralism' is treacherous"[71], as it "can be understood in so many different ways"[72]. Indeed, religious pluralism, as explored *supra*, proves to have many facets, characteristics and dimensions. Furthermore, it can be deployed in a variety of ways, with a variety of means, which tends to accentuate its complexity. In international human rights law, its deployment seems to follow three complex models: that of the European Court of Human Rights (Chapter 1), that of the Inter-American Court of Human Rights (Chapter 2) and that of the United Nations' Human Rights Committee (Chapter 3).

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[71] BECKFORD (J.), « Religious Pluralism and Diversity: Response to Yang and Thériault », *Social Compass*, 57(2), 2010, pp. 217-218.

[72] *Ibid*.

Chapter 1. The European Court of Human Rights: an axiological approach[73].

The European Court of Human Rights is the Council of Europe's main human rights protection body. The Council of Europe (CoE/the Organization) is an international organization founded in 1949, following the second World War, in an effort to foster peace among European states. The intent of the Organization was to bring European states together around shared values and common goals, which would install long-term peace through cooperation on various topics related to Democracy, Rule of Law and Human Rights. In that vein, it "can be viewed as providing the institutional basis of a regional international society"[74]. In that, it bears common features with the other major organization of the region, the European Union (EU), though it distinguishes from the latter on various aspects.

Precisely, both the Council of Europe and the European Union emanated from the intent to enhance cooperation between European states. In line with Montesquieu's views, they both emerged after the second World War as key organizations for fostering peace among European nations by enhancing cooperation and mutual collaboration[75]. Besides these commonalities, the two organizations diverged in their object, their evolution, and the number of states that would ultimately integrate them. The CoE was specifically established to enhance respect for the Rule of Law and Human Rights, as specified in article 3 of the London Treaty. These core

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[73] A previous version of this chapter was published in two articles along the year 2022. *See*, CHAIBI (M), « Protection of European Values at the International Level: The European Court of Human Rights and Freedom of Religion », *Peace and Human Rights Governance*, 6(1), pp. 9-38; CHAIBI (M.), « State and Church Relationships under the European Convention on Human Rights: a value framework for state action », *Religions*, 13(7), 797. Both articles have been reproduced in the following sections, with the adequate amendments. Section I and II correspond to the first, whereas section III corresponded to the second.

[74] STIVACHTIS (Y. A.), HABEGGER (M.), « The Council of Europe: The Institutional Limits of Contemporary European International Society? », *European Integration*, 33:2, 2011, p. 162.

[75] As developed in what is considered to be his major work—*The Spirit of Laws*—, Montesquieu argues that trade and commerce between nations establish links and common interests that progressively diminish the probability of conflict. In his own words: "Peace is the natural effect of trade. Two nations who traffic with each other become reciprocally dependent; for if one has an interest in buying, the other has an interest in selling: and thus their union is founded on their mutual necessities". *See*, MONTESQUIEU, *The Spirit of Laws*, Kitchener Ontario (Canada), Batoche Books, 2001, p. 346. It seems that the initiatives taken at the European level, with the creation of the CoE and what would later become the EU, follow this line of thought in other areas than trade and commerce. The *leitmotiv* of these international organizations, indeed, seems to be that of bringing European nations around common interests to pursue collectively, which would augment the cost of conflict in a way that would ultimately eradicate it and foster peace between the states involved.

objectives where later complemented by Democracy, thus forming the three main axes of the Organization's work in present times[76].

Along the years, the CoE has served as an institutional basis upon which member-states concluded multiple treaties in relation to Democracy, Human Rights and Rule of Law. In matters of Human Rights, for example, the Organization facilitated the adoption of one of the world's major human rights treaties—the European Convention on Human Rights (ECHR/the Convention).

Indeed, following the adoption of the Universal Declaration of Human Rights on 10 December 1948 (DUDH/Universal Declaration), proceedings commenced within the CoE for the drafting of a legally binding European human rights treaty[77]. After a lengthy process of elaborations, drafting and negotiations, the European Convention on Human Rights was finally adopted on 4 November 1950[78]. Drawing inspiration from the Universal Declaration of Human Rights, the Convention was conceived as a binding treaty, whose application would be monitored by two organs—a European Commission of Human Rights and a European Court of Human Rights (ECtHR/the Court)[79]. The Convention entered into force on 3 September 1953, following its tenth ratification[80].

Unlike the UDHR, the Convention did not provide for socio-economic rights and other rights such as the right to property and the right of parents for their children's education to be in line with their own religious and philosophical convictions. The latter, along with others concerning, for example, the right to vote, were incorporated to the Convention by subsequent Protocols. And socio-economic rights were consecrated in a separate treaty—the European Social Charter of 1961[81].

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[76] STIVACHTIS (Y. A.), HABEGGER (M.), « The Council of Europe… », p. 164-165.

[77] SCHABAS (W. A.), *The European Convention on Human Rights. A Commentary*, Oxford (England), New York (New York), Oxford University Press, First Edition, 2015, p. 4

[78] *Ibid*., p. 8.

[79] *Ibid*., pp. 4-8.

[80] *Ibid*., p. 9.

[81] *Ibid*. The European Social Charter entered into force on 26 February 1965.

Thus, with the Convention's entry into force and the settlement of its protection bodies, the European human rights system finally initiated its work. The right of individual application came into force on 5 July 1955. The first inter-state complaint, submitted by Greece against the United Kingdom, was filed by the Commission as early as 7 May 1956[82]. The Court issued its first judgment on an individual case on 14 November 1960—*Lawless v. Ireland (n° 1)*[83].

Lawless v. Ireland (n° 1) was referred to the Court by the European Commission on Human Rights. Initially, indeed, the Commission and the Court were conceived as two distinct complementary organs. The Commission would first examine the admissibility of the applications and seek a friendly settlement between the parties[84]. If such friendly settlement was not reached, the Commission would draft "a report establishing the facts and expressing an opinion on the merits of the case"[85] for the Committee of Ministers to follow with further action. The Court would examine the substance of the case only when seized by the Commission, or the states involved, and with the requirement that the two states concerned—*i.e.* the state of nationality of the alleged victim and the defendant state—priorly accept the jurisdiction of the Court[86].

Nevertheless, the later developments of the system and its activity called for the classic procedure described to be reformed and adjusted. Consequently, due to the continuous increase of the number of applications[87], the system was reformed in the following decades.

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[82] *Ibid*., p. 9.

[83] ECtHR, Chamber, 14/11/1960, *Lawless v. Ireland (n° 1)*, Application n° 332/57. *See*, SCHABAS (W. A.), *The European Convention on Human Rights*, pp. 9-10.

[84] Council of Europe, *The Conscience of Europe. 50 Years of the European Court of Human Rights*, London, Third Millennium Publishing, 2010, p. 35.

[85] *Ibid*.

[86] Also, when this jurisdiction had been accepted by two different states, they could resort to the Court directly when issuing complaints against each other.

[87] As W. Schabas reports, in the span of two years after the entry into force of the right to individual application, the Commission received 343 applications. The number continued to increase ever since, up to the 45,500 applications allocated to the Court's formations in 2022. *See*, SCHABAS (W. A.), *The European Convention on Human Rights*, pp. 9-10; European Court of Human Rights, *Annual Report 2022 of the European Court of Human Rights, Council of Europe*, 2022, p. 139.

From 1 November 1998, and the entry into force of Protocol n° 11, the Commission was abandoned. The Court was, henceforth, the only organ in charge of controlling states application of the Convention.

With 46 member-states and over 675 million inhabitants composing its jurisdiction[88], the Court dwells on alleged violations of the Convention committed in all territories under the control of its member-states. Its elaborations on the Convention are binding on all of them. The Court is key in the CoE's endeavor to bring states together around common values and principles as stated in the Preamble of the Convention and beyond.

More precisely, as the following section will try to demonstrate, values are indeed key in the Law that the Court elaborates. The latter's interpretation of the Convention proceeds from the values it embraces and considers its duty to protect (I). In religious matters, the values embraced by the Court structure and condition the triggering of article 9 guarantees, both on the individual dimension of the right (II) and the institutional dimension of the latter relating to state and church relationships (III). That is how the Court fulfils its role of bringing European states together, of harmonizing and unifying their legal frameworks around the principles set by the Convention and the CoE's founding treaty. In doing so, though, its action materializes a specific space of shared practices and meaning that integrates both institutional dynamics and individual behavior. The Court amounts to setting limits to Europe's diversity, on the religious sphere. Thus, it shows a particular stance towards diversity, that tends to include some behaviors and exclude others, amounting to a limited pluralism that the Religious Market Economy theory terms as 'oligopoly' (IV).

I. The Values and the Law in the European Convention on Human Rights.

Values, society and law may sound as three distinct concepts, quite independent from one another. Society is the abstraction of a mass of individuals, gathered into a limited space, into

[88] By Resolution CM/Res(2022)2, dated 16 March 2022, the Committee of Ministers decided "that the Russian Federation ceases to be a member of the Council of Europe". Pursuant to this decision, Resolution CM/Res(2022)3 states that "the [European] Court [of Human Rights] remains competent to deal with applications directed against the Russian Federation in relation to acts or omissions capable of constituting a violation of the Convention provided that they occurred until 16 September 2022". *See*, Resolution CM/Res(2022)3, para. 7.

one concept that encompasses them all. Law is the set of rules that organizes their interactions. And values are intangible principles unifying their interactions, as regulated by law or as emerging from practice, into one global system of 'meaning'. The realm of society may therefore appear to be distinct than that of values—which is closer to philosophy—and that of law. But this appearance is a mere appearance, as the two latter concepts happen to be emanations of the first—society. Furthermore, law and values are quite intertwined concepts, interrelated, and can sometimes even merge into one another. Both values and law are sets of principles followed by individuals, or any entity, in their interactions with others: values may become legal principles when they be enacted as such by the competent authorities.

It is in this intellectual stream that the European Court of Human Rights seems to be comprising both concepts. Throughout its case-law, it has regularly been affirming that some articles of the European Convention on Human Rights are values *per se*, unifying the behavior of its member states around "behavioral constants" endowed with a legal dimension.

So is article 3 of the Convention, for example, which "enshrines one of the most fundamental values of democratic societies"[89] and henceforth prohibits torture in absolute terms. So is article 2 also, which "[t]ogether with Article 3 (…) also enshrines one of the basic values of the democratic societies making up the Council of Europe"[90]. As for the Court, it also seems to consider the Convention's articles likewise, that is, as legal provisions containing the deepest values structuring the democratic societies composing its jurisdiction[91].

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[89] ECtHR, Grand Chamber, Judgment, 28/07/1999, *Selmouni v. France*, Application n° 25803/94, para. 95.

[90] ECtHR, Grand Chamber, Judgment, 27/09/1995, *McCann and Others v. The United Kingdom*, Application n° 18984/91, para. 147.

[91] For example, in ECtHR, Fourth Section, Judgment, 24/02/2015, *Karaahmed v. Bulgaria*, Application n° 30587/13, the Court was examining a case where several articles were conflicting with each another. Precisely, the case involved a demonstration, which was protected by article 11 of the Convention, against a religious gathering for worshipping purposes, consequently protected by article 9. Instead of referring to the articles of the Convention as such, the Court rather states that two values of the latter were at stake. In its words: "as is always the case when a Contracting State seeks to protect two values guaranteed by the Convention which may come into conflict with each other, in the exercise of its European supervisory duties, the Court's task is to verify whether the authorities struck a fair balance between those two values". *See*, *Karaahmed v. Bulgaria*, para. 95. The *obiter dictum* suggests the Court considers the legal provisions of the Convention to be values as such to be protected by its states parties.

But despite being identical in their substantial nature, articles of the Convention differ widely on other dimensions, as they do not have the same impact. Unlike operational articles, such as article 6 which concern the functioning of the state and its institutions, others such as article 9 impact directly the daily life of individuals and the way they behave in society. As a consequence, their impact on the latter, on its configuration and its values, tends to be greater than that of the aforementioned operational articles, for they touch directly upon the behavior of the individuals. Operational articles touch rather upon the behavior of the state and its institutions; they tend to impact institutional dynamics rather than individual behavior of citizens. In other words, such articles as article 9 of the Convention do not only draw the limits of state action, they also suggest ways of behaving for individuals. In that, they ultimately participate to shaping the social landscape of societies on which they apply, where said individuals evolve.

In other words, the Court's elaborations on the law may entail an impact on social values, and even amount to shaping the social configuration of a society. Contrasting with their apparent impermeability, values, law and society are closely related concepts, as any action on one of them amounts ultimately to impacting the two others. The Court's—legal—developments provide an abundant example thereof, despite the limits surrounding its activity.

The European Court of Human Rights, indeed, is a Court of law. As such, when assessing a case, it only examines the arguments brought forth by the applicants[92]. Then, after balancing the different interests opposing the parties, it rules and gives its judgment accordingly. If the Court remains the master of the legal qualification to be given to the facts of the case[93], the

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[92] *See*, BARNABE (B.), « L'Office du juge et la Liturgie du Juste », *Cahiers Philosophiques*, 147(4), pp. 48-67; FROST (A.), « The Limits of Advocacy », *Duke Law Journal*, 59(3), pp. 447-517.

[93] The Court is the only master of their legal qualification. In its proper words: "the Court is master of the characterisation to be given in law to the facts of the case, it does not consider itself bound by the characterisation given by the applicant or the Government". *See*, ECtHR, Grand Chamber, Judgment, 17/09/2009, *Scoppola v. Italy [N° 2]*, Application n° 10249/03, para. 54; ECtHR, Chamber, Judgment, 21/02/1990, *Powell and Rayner v. The United Kingdom*, Application n° 9310/81, para. 29; ECtHR, Judgment, 19/02/1998, *Guerra and Others v. Italy*, Application n° 116/1996/735/932, para. 44. In other words, it is the Court who determines which are the articles of the Convention that the facts of a case trigger, in which they fall. Illustrating this idea, its quote goes on to say that "[b]y virtue of the *jura novit curia* principle, it has, for example, considered of its own motion complaints under Articles or paragraphs not relied on by the parties and even under a provision in respect of which the Commission had declared the complaint to be inadmissible while declaring it admissible under a different one. A complaint is characterised by the facts alleged in it and not merely by the legal grounds or arguments relied on". *See*, ECtHR, Grand Chamber, Judgment, 17/09/2009, *Scoppola v. Italy [N° 2]*, Application n° 10249/03, para. 54.

latter operation is one limit it does not exceed. If the legal qualification of the facts, *i.e.* the determination of which article the latter trigger, is the mandate of the Court, the actual content of the litigation is that of the litigants themselves and the arguments, strategies and legal narratives they bring forth. In other words, the field of the litigation is for the Court to determine; the precise issues to examine are for the litigants to elaborate. The variety of issues it has accordingly faced along the years has brought the Court to build a substantial, complex and nuanced edifice concerning religious freedom. Said edifice shows a particular emphasis on social values, which appear to govern both individual guarantees (I) and the legal interactions taking place between states and religions (II).

II. Values: the cornerstone of individual guarantees.

Analyzing case-law in matters of individual religious freedom—*i.e.* article 9 litigations, alongside its corresponding article 11 and article 2 of protocol 1—tends to show a three-steps evolution in the Court's approach to religious freedom and religious manifestations. In its early beginnings, the Court tended to show a *pro religio* stance (1), which consisted in endowing religions with a greater importance in the assessment of cases. Then, as the number of religious litigations augmented, bringing religious diversity to the assessment of the Court, the latter appeared to shift towards an *ad valorem* approach (2). Eventually, some key questionings lead it to precise the scope of said approach, which the Court narrowed down to European values only, leaving aside other value-related questionings that fall under the exclusivity of states' domestic jurisdiction (3).

As an illustration of this movement, some of the most salient judgments have been selected. For the facts they contain, they have given way to statements that show *expressis verbis* the approach of the Court, and the bases on which the latter relies when ruling upon issues of a value nature. As the judgements reveal, the facts of the cases brought forth precise legal issues, and the Court's findings thereon were laid in explicit wordings. Following, it is possible to expose precisely, using the Court's own words, the approach followed by the latter and the rationale at work in the adjudicating process. A rationale that also manifest in other cases bringing forth similar questionings.

The value approach applied to religious freedom has proven to be acutely penetrating, reaching far beyond state obligations. Indeed, touching concretely upon individual behavior, it impacts directly how individuals behave in society and consequently participates to shaping the social landscape of the global society under its jurisdiction[94]. In doing so, though, the Court elaborates only on those values it considers as the basis of the Convention, the *raison d'être* of its action, the heart of its mandate, avoiding any values that are not shared by the community of states forming its jurisdiction.

1. The origins: *Pro religio*.

The first religious cases elevated before the Court date back to the middle of the 1990s, three decades after the ratification of the Convention[95]. It is only then that the Court started building its legal edifice on religious freedom. It is only then that it started to address religions and their manifestations in Society.

In *Otto-Preminger-Institut v. Austria*[96], for example, the Court had to examine the seizure of a film by the Austrian authorities. The film was an adaptation of German Oskar Panizza's play, *The Council of Love*, and portrayed Christianity's sacred religious figures, namely God, Jesus-Christ and the Virgin Mary, in a way that was deemed as overtly provocative[97]. After its publication in 1894, the play led its writer to be tried and sentenced to imprisonment for crime against religion, and was later banned in Germany[98]. Its cinematographic adaptation, which was at the heart of the case before the European Court, was accordingly seized by the

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[94] That is, the society formed-up of its 47 member-states.

[95] Before that period, it had examined some cases relating to narrow dimensions of religious freedom, the main of which was parent's rights in the education of their children. *See*, *inter alia*, ECtHR, Chamber, Judgment, 07/12/1976, *Kjeldsen, Busk Madsen and Pedersen v. Denmark*, Application n° 5095/71, 5920/72, 5926/72; Commission, Decision on the Admissibility, 05/05/1979, *X. and Church of Scientology v. Sweden*, Application n° 7805/77; Commission, Decision on the Admissibility, 19/03/1981, *Omkarananda and the Devine Light Zentrum v. Switzerland*, Application n° 8118/77; ECtHR, Chamber, Judgment, 25/02/1982, *Campbell and Cosans v. United Kingdom*, Applications n° 7511/76 and 7743/76. In it is this latter case that the Court specified what was to be intended as 'religion' or 'belief' according to the convention. *See*, *Campbell and Cosans v. United Kingdom*, para. 36.

[96] ECtHR, Chamber, Judgment, 20/09/1994, *Otto-Preminger-Institut v. Austria*, Application n° 13470/87.

[97] *Ibid*., paras. 20-22.

[98] *Ibid*., para. 20.

authorities. The Austrian courts found the seizure justified, as the film was such as "to offend the religious feelings of an average person with normal religious sensitivity"[99].

When facing the facts, the European Court of Human Rights applied its traditional balancing of the competing interests at stake. It was facing, on one side of the balance, institute Otto Preminger's right to freely communicate a piece of art, and that of any third party wishing to know the content of the latter. On the other side, it had to consider the religious feelings of those persons who embraced the ideas that were subject to satire. The Court, therefore, found that holding religious beliefs does not preclude from being subject to critique—those who hold such beliefs "must tolerate and accept the denial by others of their religious beliefs and even the propagation by others of doctrines hostile to their faith"[100]. But, the Court added, the state remains bound by its responsibility to ensure the peaceful enjoyment of freedom of religion by individuals[101]. In other words, the state remains responsible of ensuring that the way ideas and doctrines directed against any set of beliefs, as mere critiques or properly hostile to them, be communicated in a way that does not prevent the ones who hold them from willingly holding and exercising them. In fact, the Court goes even further: it states that these ideas must not be such as to "*inhibit* those who hold such beliefs from exercising their freedom to hold and express them"[102] [emphasis added]. That is, the critiques must not cause the believers to feel any sort of pernicious pressure likely to get them to hiding, limiting, or renouncing to their beliefs or to the manifestation thereof. Consequently, given the characteristics of the film at stake, the ideas it conveyed and the particular contextual features

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[99] *Ibid.*, para. 13. In fact, as it appears in the ECtHR's judgment, the "Court of Appeal considered that artistic freedom was necessarily limited by the rights of others to freedom of religion and by the duty of the State to safeguard a society based on order and tolerance. It further held that indignation was 'justified' for the purposes of section 188 of the Penal Code only if its object was such as to offend the religious feelings of an average person with normal religious sensitivity. That condition was fulfilled in the instant case and forfeiture of the film could be ordered in principle, at least in 'objective proceedings'. The wholesale derision of religious feeling outweighed any interest the general public might have in information or the financial interests of persons wishing to show the film". *See ibid.*

[100] *Otto-Preminger-Institut v. Austria*, para. 47.

[101] *Ibid.*

[102] *Ibid*.

of the society where it was seized, the Court concluded the seizure did not infringe the rights of its makers and broadcasters[103].

The Court, in this case, determined first how the believers following the criticized religion would receive the critics. In finding that a critique, of any idea, must not inhibit anyone from embracing it or manifesting it in practice, it put itself in the situation of the believers and examined from that stance whether the critique at stake was likely to have such an effect on them. It did not consider the issue from the filmmaker's point of view, or that of the organization broadcasting the film. Rather, it examined the case from the abstracted perspective of how believers would feel when facing such a critique. More precisely, it did not examine the case from the point of view of its alleged victim—the applicant—which was seeking the protection of the Convention, but rather from that of the religion at stake. Therefore, the seizure of the applicant's film would have amounted to a violation only if the critiques were not virulent enough on the religion aimed at, if they did not go beyond what that religion could suffer as a critique, given the context.

In other words, the Court put the religion concerned in the center of its assessment, and conducted the assessment accordingly. This *modus operandi* had been already deployed in an earlier case involving Jehovah's Witnesses: *Kokkinakis v. Greece*[104].

In this case, indeed, the Court had to examine the conformity, with the Convention, of acts of proselytism. Precisely, the applicant—Mr Kokkinakis—was a Jehovah's Witness, he had been carrying acts of proselytism ever since he converted and was accordingly arrested and sentenced for imprisonment on several occasions[105]. Therefore, he went on to the European Court of Human Rights to seek the protection of Convention's article 9[106].

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[103] The Courts left indeed the issue of assessing the quality of the ideas expressed and their impact on believers to the margin of appreciation of the Austrian authorities, given that it was impossible for it to discern any common conception or practice within its state-parties on that matter. *See*, *ibid.*, para. 50. In addition, the characteristics surrounding the religiosity of Tyroleans as a society caused their religious feelings to weigh more, on the balance of interests, than the film as an artistic production or an expression of the ideas it contained. *See*, *ibid.*, paras. 55-56.

[104] ECtHR, Chamber, Judgment, 25/05/1993, *Kokkinakis v. Greece*, Application n° 14307/88.

[105] *Ibid*., para. 7.

[106] *Ibid*., para. 29.

When delving into the case, the Court starts emphasizing the importance of article 9, stressing, in particular, that "pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it"[107]. Then it declares, regarding the precise issue of proselytism, that freedom of religion as protected by article 9 "includes in principle the right to try to convince one's neighbour (…) failing which (…) 'freedom to change [one's] religion or belief', enshrined in Article 9 (art. 9), would be likely to remain a dead letter"[108].

As in *Otto-Preminger-Institut v. Austria*, the Court, in this case, put religion in the centre of its analysis and ruled accordingly. In other words, it placed the religion concerned at the heart of the case, and ruled according to the needs of the latter. That need being, in the case at hand, the possibility for it to be spread. The Court indeed considered this aspect as a core component of freedom of religion, and consequently of article 9. In other words, it is by definition that a religion seeks to be spread; therefore, forbidding the possibility for its believers to spread it amounts to a violation of freedom of religion as enshrined in article 9 of the Convention.

Hence it appears that the *modus operandi* of the Court, when assessing religious cases, is characterized by a special focus on the religion at stake. More so, it appears that the Court puts the religion in question in the centre of its examination, and rules by what it sees fit to the latter. In *Kokkinakis v. Greece*, it even resorted, in order to assess the acts before it, to the distinction drawn by the World Council of Churches between "true evangelism" and "improper proselytism"[109]. Likewise, through the same logic, it found legitimate for members of a religion to even disobey state laws preventing them from practicing their religion[110].

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[107] *Ibid.*, para. 31.

[108] *Ibid*.

[109] *Ibid*., para. 48.

[110] ECtHR, Chamber, Judgment, 29/09/1996, *Manoussakis and Others v. Greece*, Application n° 18748/91, paras. 12, 52-53.

This way of proceeding is particularly favourable to religions and beliefs, and amounts to a *pro religio* interpretation of the Convention[111]. Being the central focus of its examination, being the core interest of a case, religions benefit from a larger protection of the Convention than any other interest at stake in the cases. Furthermore, adopting this *modus operandi* amounts also to adopting religions' concepts and conceptualizations as heuristics to face the realities involved in the cases. For example, as mentioned in the above *Kokkinakis v. Greece* judgment, the Court drew its distinction between legitimate and improper proselytism from a report established by the World Council of Churches, a Christian religious organization[112].

Therefore, the *modus operandi* that the Court has followed from the incipient beginnings of its religious jurisprudence seems to be characterized by the will to endow religions with the maximal degree of liberty to manifest. Its interpretation, as stems from the first foundations of its religious jurisprudential edifice, seems to have been *pro religio*. Yet, in its later developments, a slight change emerged, moving its focus from the religions strictly speaking to what could be their secularized emanations—social values.

2. The Aftermath: *Ad Valorem*.

After the founding judgments, the Court was faced with manifestations which appeared to be rooted in other religions that the traditional Christian religions. It is from that period that the Court was to fully face diversity[113], with cases that brought forth acts and questionings of a different nature. As a consequence, the Court appeared to slightly adjust its *modus operandi* when assessing cases, placing social values as the main focus of its reasoning in lieu of Religion (A). Its *modus decidendi* went, consequently, to be more *ad valorem* than *pro religio*, as in the previous cases (B).

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[111] *See*, CHAIBI (M.), *L'Islam dans la jurisprudence de la Cour Européenne des droits de l'Homme*, Master thesis defended at University of Lille in Septembre 2017, under the supervision of Pr. E. Bernard, pp. 21-28 [https://independent.academia.edu/MoncefChaibi, last accessed: 01/12/2021].

[112] *Kokkinakis v. Greece*, para. 48.

[113] In actual facts, the Court had already started facing diversity of beliefs and their manifestations such as Veganism, Pacifism, Secularism, etc. *See*, *inter alia*, Commission, Decision on the Admissibility, 10/09/1997, *Yvonne Th. M. Van Schijndel, Lutgarde Van Der Heyden and Dirk J. Leenman v. The Netherlands*; Commission, Decision on the Admissibility,10/02/1993, *C. W. v. United Kingdom*, Application n° 18187/91… Nevertheless, these cases did not give way to substantiated judgments. The first spark of complexity, through diversity, was therefore in the early decade of 2000 with the following cases.

A. From religion to values: After the religious edifice of the Court received its first pieces in the early years of the 1990 decade, the number of cases involving religions, religious freedom, and religious manifestations grew quickly and significantly. In fact, if the 1990 decade was that of the bases of the edifice, the 2000 decade was that of its building and shaping. It confronted the Court, indeed, with a wide range of religious issues that provided the legal regime set in the founding judgments with further depth and nuances.

In 2001, for example, the Court had to examine the case of a public school teacher who, after converting to Islam, decided to wear a headscarf[114]. Given its religious nature, said manifestation was deemed contrary to the legal regime governing state-Church relationships in Switzerland, which is based on *Laïcité* system, and the applicant was forbidden from wearing it[115]. Therefore, the applicant went to court arguing the interdiction infringed upon her religious freedom[116], ultimately reaching the European Court of Human Rights which gave its decision on the 15th of February 2001.

In this decision, the Court considered the applicant's claim inadmissible. Her claim, in other words, did not enter into the scope of article 9. When assessing the facts of the case, the Court found the measure opposed to the applicant was prescribed by law and seeking to protect "the rights and freedoms of others, public safety and public order"[117]. Furthermore, it found it "necessary in a democratic society [in that, given the factual characteristics of the case,] the wearing of a headscarf might have some kind of proselytising effect, seeing that it appears to be imposed on women by a precept which is laid down in the Koran and which (…) is hard to square with the principle of gender equality"[118]. Then, concluding, it added that it was "difficult to reconcile the wearing of an Islamic headscarf with the message of tolerance,

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[114] ECtHR, Second Section, Decision, 15/02/2001, *Dahlab v. Switzerland*, Application n° 42393/98.

[115] *Dahlab v. Switzerland*, p. 2.

[116] *Ibid*., p. 9.

[117] *Ibid*., p. 12.

[118] *Ibid*., p. 13.

respect for others and, above all, equality and non-discrimination that all teachers in a democratic society must convey to their pupils"[119].

In other words, insofar as the applicant's headscarf was irreconcilable with such fundamental values as gender equality, non-discrimination, tolerance and respect for others, authorities could prohibit its wearing without infringing the Convention.

In this case again, the Court shows the same kind of approach as the one it followed in the founding judgments. It seems to have resorted to the religion commanding the wearing of the headscarf, as it stated the commandment stems from the Koran, in order to subsequently rule upon the facts. But this time, it found article 9 of the Convention did not encompass the religious manifestation; it found the latter did not form part of the scope of article 9, as it infringed the set of values the Court went on listing. The religious manifestation involved in this case was the expression of a set of values that were not those on which the Convention and its article 9 rest. Therefore, falling outside their scope, it could not benefit from their protection.

The very same logic was followed in cases provided before the Court in the following years. Albeit differences of facts and precise issues at the heart of each litigation, which would ultimately make the nuances of the Court's religious jurisprudence, the *modus operandi* followed by the Court was identical. In *Refah Partisi v. Turkey*[120], the Court had to examine the dissolution of a political Party, the Refah Partisi (Welfare Party), by the Turkish Constitutional Court[121]. Based on some of its members' declarations, the latter found the Party

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[119] *Ibid*.

[120] ECtHR, Grand Chamber, Judgment, 13/02/2003, *Refah Partisi (Welfare Party) v. Turkey*, Application n°41340/98, 41342/98, 41343/98 and 41344/98. The case was examined under article 11 of the Convention, which guarantees the right to freedom of expression. Nevertheless, the 'expressions' and statements at the heart of the litigation had a religious substance making them verbal manifestations of a religious nature. Furthermore, they were performed by membres of parliament and members of a political Party, whose political program was based on religious teachings and ideas extracted from a religion. So much so, the litigation was of a religious substance. Albeit examined through article 11, as the litigants opted for the latter provision, the issue of the case seems to have been a religious manifestations that took place in a verbal form.

[121] *Refah Partisi (Welfare Party) v. Turkey*, paras. 22-26.

had become a "centre of activities contrary to the principle of secularism"[122]. Hence the Party was dissolved and some of its members deprived from their political rights[123].

Regarding the dissolution measure, strictly speaking, the European Court of Human Rights found it was "prescribed by law"—in that it was a direct application of constitutional provisions[124]—and pronounced for protecting national security and public safety, preventing disorder or crime, and protecting of the rights and freedoms of others[125]. When assessing its lawfulness regarding the Convention, the Court recalls its previous position that "in a democratic society the State may limit the freedom to manifest a religion, for example by wearing an Islamic headscarf, if the exercise of that freedom clashes with the aim of protecting the rights and freedoms of others, public order and public safety"[126]. Accordingly, it examined whether the religious manifestations at stake—the verbal declaration of the Party members and the program defended by the latter—were of such a nature as to justify their limitation by the pronounced dissolution. And to that regard, it states that "the offending statements, which contain explicit references to the introduction of sharia, are difficult to reconcile with the fundamental principles of democracy, as conceived in the Convention taken as a whole. It is difficult to declare one's respect for democracy and human rights while at the same time supporting a regime based on sharia, which clearly diverges from Convention values (…). In the Court's view, a political Party whose actions seem to be aimed at introducing sharia in a state party to the Convention can hardly be regarded as an association complying with the democratic ideal that underlies the whole of the Convention"[127]. Consequently, it found the dissolution in keeping with article 11 requirements.

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[122] *Ibid*., para. 23. Among the measures defended in its program, the Party advocated for instauring a multi-level legal system based on religious affiliation. That is, according to their affiliation, citizens could claim the application of one legal system or another. Sharia was one of the sub-systems considered, and seems to have been considered by the Court as the main system advocated for by the Party.

[123] *Ibid*., paras. 23-24.

[124] *Ibid*., paras. 56-63.

[125] *Ibid*., para. 67.

[126] This finding was set, as recalled in the Judgment, in the Court's aforementioned *Dahlab v. Switzerland* decision. *See ibid*., para. 92.

[127] *Ibid*., para. 123.

In a simpler wording, the Court says, in its *dicta*, that Convention rights call for a pluralistic approach: it "considers that there can be no democracy without pluralism"[128]. Given the Party's program, based on Sharia, overtly contradicts such principles as pluralism and constant evolution of public freedoms, it diverges from the Convention values and the democratic ideal that underlies the whole of it[129]. Consequently, the Party's activities were contrary to the Convention, it could not be authorized to pursue them, its dissolution was in keeping with article 11. As in *Dahlab v. Switzerland*, the Court found the religious manifestation at stake to fall outside the scope of the Convention for contradicting the values on which the latter rests, by which it is structured. As a consequence, it could not benefit from the protection of the Convention.

The Court seems to have adopted this *modus operandi* in all the cases it had to examine. Whenever a religious manifestation deviated from Convention values, rested on others or was found to contradict them, the Court seems to have denied them the benefit of its protection. This way of proceeding appears to be slightly distinct from the one relied upon by the Court in previous cases—especially the founding judgments of its religious jurisprudence. If it adopted the same *modus operandi*, which consists in delving into the religion involved in the case, in its later judgments indicate that it relied on more precise aspects of the religion faced. These precise aspects were not considered in the founding judgments.

In cases such as the ones presented, indeed, the Court delved into the religion at stake and considered it from a value perspective. It ruled on the case after determining the values by which the religious manifestations were structured. It went beyond the religion involved, strictly speaking, to examine the axiological system that structures it. Then, arbitrating in between these values and those of the Convention, it ruled on the case.

In 2017, the Court was faced with parents' claim to dispense their daughters from swimming classes for religious reasons[130]. After assessing the case, it found children's "interest in an all-

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[128] *Ibid*., para. 89.

[129] *Ibid*., para. 123.

[130] ECtHR, Third Section, 10/01/2017, *Osmanoğlu and Kocabaş v. Switzerland*, application n° 29086/12.

round education, facilitating their successful social integration according to local customs and mores, takes precedence over the parents' wish to have their daughters exempted from mixed swimming lessons"[131]. In other words, abiding by the social values facilitating their integration was more important for the children than following their parents' will to be raised according to their religious views.

Such an approach seems to modify substantially the way the Court used to approach religious manifestations and religious cases. If its first judgments showed a *pro religio* reasoning, the later ones suggest it rather operates *ad valorem*.

B. From *pro religio* to *ad valorem*: The first decade of religious jurisprudence was marked with a predominance of Christian religions in case-law; the following decade confronted the Court with diversity. Out of this confrontation, new issues were to emerge, new regulations, and an adjustment of the *modus operandi* which was to become more value-centered.

To that regard, the Court's approach does not seem to have changed. The Court always delves into the religion involved and looks for endowing it with the maximal degree of liberty. The value narrative on the practices and religious manifestations involved in litigations were mainly developed regarding extra-Christian religions—mainly Islam for the number of cases[132]. Therefore, the impact of the value narrative on the classic *modus operandi* appears to be an additional operation: before examining the facts strictly speaking, the Court seems to first determine on which values the religious manifestations at stake rest[133]. The said values

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[131] *Osmanoğlu and Kocabaş v. Switzerland*, paras. 97-98. Indeed, the Court noted that "a child's interest in attending those lessons lies not merely in learning to swim and taking physical exercise, but above all in participating in that activity with all the other pupils, without exception on the basis of the child's origin or the parents' religious or philosophical convictions".

[132] *See*, *inter alia*, ECtHR, Grand Chamber, Judgment, 13/02/2003, *Refah Partisi (Welfare Party) v. Turkey*, Application n°41340/98, 41342/98, 41343/98 and 41344/98; ECtHR, Grand Chamber, Judgment, 10/11/2005, *Leyla Şahin v. Turkey*, Application n° 44774/98; ECtHR, Second Section, Decision, 24/01/2006, *Şefika Köse and 93 Others v. Turkey*, Application n° 26625/02; ECtHR, Fifth Section, Judgment, 04/12/2008, *Dogru v. France*, Application n° 27058/05; ECtHR, Fifth Section, Judgment, 26/11/2015, *Ebrahimian v. France*, Application n° 64846/11; ECtHR, Third Section, 10/01/2017, *Osmanoğlu et Kocabaş v. Switzerland*, Application n° 29086/12; ECtHR, Grand Chamber, Judgment, 19/12/2018, *Molla Sali v. Greece*, Application n° 20452/14.

[133] BURGORGUE-LARSEN (L.), DUBOUT (E.), « Le port du voile à l'université. Libres propos sur l'arrêt de la Grande Chambre *Leyla Sahin c. Turquie* du 10 novembre 2005 », *Revue Trimestrielle des Droits de l'Homme*, 66, 2006, p. 197. Also, Judge Tulkens' dissenting opinion *in* ECtHR, Grand Chamber, Judgment, 10/11/2005, *Leyla Şahin v. Turkey*, Application n° 44774/98, para. 17.

become, as a consequence, a filter for the deployment of article 9 guarantees. They become the factor which triggers its application to the case and the religious manifestation involved. In other words, the first operation to be carried out by the Court would be valuing the religious manifestation and comparing the values that structure it with those underlying the Convention, only deploying the protection provided by the latter when there be coincidence in between the two. As a consequence, the concrete facts, the litigants, and the contextual features of the litigation would be left to a second analytical degree, stuck behind a veil of abstract developments on values[134].

Such a way of assessing judicial cases gives the foreground preference to those social values selected as being the basis of the legal text to apply. Those social values, in this perspective, become more important than acts resulting from individual freedom. The Court's interpretation becomes therefore an *ad valorem* interpretation, rather than *pro religio* only. An approach that further corresponds to its global interpretation of the Convention as set in cases such as *Soering v. The United Kingdom*[135], *Selmouni v. France*[136], *McCann and Others v. The United Kingdom*[137], or *Tyrer v. The United Kingdom*[138]...

In *Soering v. The United Kingdom*, the Court was confronted with the situation of an inmate who was pending extradition to the United States of America in order to serve his sentence,

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[134] BURGORGUE-LARSEN (L.), DUBOUT (E.), « Le port du voile à l'université… », p. 197. Even in such cases as those involving *Laïcité* systems, the Court had a tendency not to dwell on the concrete condition of the litigants. Rather, it examined the legitimacy of the application of the system requirements. That is, instead of examining the contextual features of a case, what was the position of the litigant, what was required from them and whether the measure adopted by the authorities infringed any of their rights in that position, the Court rather dwelled on whether the system itself coincided with the Convention. And, in order to sort whether the system was in keeping with the Convention, it resorted to examining whether it was in keeping with its values and ideals. *See*, *inter alia*, ECtHR, Grand Chamber, Judgment, 10/11/2005, *Leyla Şahin v. Turkey*, Application n° 44774/98; ECtHR, Second Section, Decision, 24/01/2006, *Şefika Köse and 93 Others v. Turkey*, Application n° 26625/02; ECtHR, Fifth Section, Judgment, 04/12/2008, *Dogru v. France*, Application n° 27058/05; ECtHR, Fifth Section, Judgment, 26/11/2015, *Ebrahimian v. France*, Application n° 64846/11. In another context, involving also the application of Sharia principles but as recognized by the state-party through its legal system, *see* ECtHR, Grand Chamber, Judgment, 19/12/2018, *Molla Sali v. Greece*, Application n° 20452/14.

[135] ECtHR, Plenary, Judgment, 07/07/1989, *Soering v. The United Kingdom*, Application n° 14038/88.

[136] *Selmouni v. France*, para. 95. The Court states indeed that "Article 3 enshrines one of the most fundamental values of democratic societies. Even in the most difficult circumstances, such as the fight against terrorism and organised crime, the Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment".

[137] *McCann and Others v. The United Kingdom*, para. 147, where the Courts finds that article 2 "enshrines one of the basic values of the democratic societies making up the Council of Europe".

[138] ECtHR, Chambre, Judgment, 25/04/1978, *Tyrer v. The United Kingdom*, Application n° 5856/72.

which was capital punishment. The applicant was arguing that, by extraditing him, the United Kingdom would violate his right to not be subjected to torture or cruel and inhuman treatment as protected under article 3 of the Convention. In its judgment, the Court found that "any interpretation of the rights and freedoms guaranteed has to be consistent with 'the general spirit of the Convention, an instrument designed to maintain and promote the ideals and values of a democratic society'"[139]. And has therefore concluded that, were the United Kingdom to extradite the applicant, the state would indeed violate his right under article 3.

In *Tyrer v. The United Kingdom*, the applicant, who was a teenager at the time of the facts, had been sentenced and subjected to corporal punishments which he argued to be a violation of article 3 of the Convention prohibiting torture and inhuman or degrading treatments or punishments. When assessing the case, the Court declared "that the Convention is a living instrument which (…) must be interpreted in the light of present-day conditions"[140]. It accordingly found the punishment to be a breach of article 3 of the Convention.

Thus, it appears the *ad valorem* approach developed by the Court is neither new nor circumscribed to religious freedom and religious manifestations. Rather, it appears to be a more transcendental approach that irradiates the whole Convention. What varies are the concrete—intellectual—modalities of its execution, which adjust to the article considered, its characteristics, structure, context of application and the obligations it conveys. Article 2 protects the right to life, for example, when article 3 protects individuals from torture or degrading treatments, whereas article 9 protects individuals in the daily practice of their religion or spirituality. As these three provisions, Convention articles apply in different contexts, aim at safeguarding different goods. Their structure may therefore vary, albeit resting on the same conceptual premises.

In the case of article 9, which is directly connected to Society through individual behavior, its configuration and scope participate directly to shaping the social landscape of a society—in its religious dimensions and beyond. Narrowing its scope to a certain set of values would

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[139] *Soering v. The United Kingdom*, para. 87.

[140] *Tyrer v. The United Kingdom*, para. 31

therefore participate to structuring society through said values. In other words, by protecting only such acts which correspond to certain values, states come to be in a situation where they be likely to forbid any manifestation that does not coincide with them. Doing so delimits the visible sphere of society to what said values allow, hence shaping the society they make-up.

Given its wide jurisdiction, covering 47 member states, the Court often finds itself in the situation of assessing manifestations and general issues on which no common practice unifies the states under its jurisdiction[141]. As the practice of a state regarding an issue tends to depend on the way society views, values and considers it, cases were submitted to the Court's examination which brought forth the issue of disparity of values among them. So much so, regarding values, the Court shows a double approach.

3. Values: between Domestic and European realms.

As explained *supra*, values are abstract principles unifying diverse elements into a system. In the legal realm, therefore, they are the principles that unify all the laws and legal norms into a unique global consistent construct called 'the legal system'. In the realm of societies, they are the common principles structuring the latter, that is, the set of principles on which individuals rely when behaving in the different spheres of everyday life. Henceforth, they are also the principles which unify different mores, behaviors and practices taking place in a society into one global consistent—social—system.

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[141] This discrepancy between states approaches has given way to the doctrine of national margin of appreciation, which the Court has been using on many occasions involving several articles of the Convention, including in religious matters and regarding article 9. For example, in ECtHR, Grand Chamber, Judgment, 26/04/2016, *İzzetjn Dogan and Others v. Turkey*, Application n° 62649/10, para. 112 in which the Court states that "Contracting States must be left a margin of appreciation in choosing the forms of cooperation with the various religious communities''. Also, *ibid.*, para. 132, in which "the Court acknowledges that (…) where questions concerning the relationship between the State and religious movements are at stake, on which opinion in a democratic society may reasonably differ widely, the role of the domestic policy-maker should be given special weight (…). Respondent States therefore have some margin of appreciation in choosing the forms of cooperation with the various religious communities. It is clear in the present case that the respondent State has overstepped its margin of appreciation in choosing the forms of cooperation with the various faiths". Other examples are ECtHR, Grand Chamber, Judgment, 12/06/2014, *Fernandez Martinez v. Spain*, Application n° 56030/07, para. 130 and ECtHR, Grand Chamber, Judgment, 09/07/2013, *Sindicatul 'Păstorul Cel Bun' v. Rumania*, Application n° 2330/09, para. 13, where the Court found that "where questions concerning the relationship between State and religions, on which opinion in a democratic society may reasonably differ widely, are at stake, the role of the national decision-making body must be given special importance (…). This will be the case in particular where practice in European States is characterised by a wide variety of constitutional models governing relations between the State and religious denominations".

By definition, therefore, values are contained into a system. For they only unify different elements into a system, they are enshrined within the system they consequently build. Thus, they are contained within the limits of said system. In the realm of law, the sum of these limits materializes a legal order; in the realm of societies, they materialize a 'culture', a territory, or a 'civilization'—depending on the criterion of definition.

The European Court of Human Rights has a limited jurisdiction. Geographically, it is contained within the outer frontiers of its state-parties, which compose, according to its jurisprudence, a space of 'common values and ideals'[142] (A). Nevertheless, this global space does not erase the nuances and particularities of each society that each state represents individually (B): diversity remains, even within the unity of values and ideals. The Court has considered and confronted this aspect in its case-law[143].

A. A European space of guarantee: Using social values to assess practices and behaviors, in order to endow them with legal protection, amounts, as stated *supra*, to filtering which practices and behaviors be allowed in society. It consists in delimiting the socially acceptable, in protecting a certain image, or an ideal state of fact concerning society. Using social values to assess and direct the application of the Convention ultimately yields in shaping the global society that its state-parties compose altogether. In other words, when the Court makes use of values in assessing and legally treating behaviors and practices, it tends to favor a certain type of society at the detriment of another[144].

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[142] As recalled *supra*, in the case of *Soering v. The United Kingdom*, the Convention is "an instrument designed to maintain and promote the ideals and values of a democratic society". *See*, *Soering v. The United Kingdom*, para. 87.

[143] Its approach on this issue goes in line with its doctrine of national margin of appreciation, thus confirming the conception that the Court holds of its mandate, which appears to be that of a crystalizer aggregating the common patterns shared by its state-parties into one complex construct—the European Human Rights system—and emanating from freely determined tendencies and dynamics. In that, the Court participates to building a wide European society through a freely choses convergence of state practices and conceptions.

[144] When the Court renders a judgment, it is a state's obligation to implement it, and adopt the suitable measures for that end. A judgment constitutes a mandate for the state to act. Consequently, its judgments are followed by domestic legal measures reinforcing or forbidding individual practices. *See*, FOKAS (E.), « Directions in Religious Pluralism in Europe: Mobilizations in the Shadow of European Court of Human Rights Religious Freedom Jurisprudence », *Oxford Journal of Law and Religion*, 4, 2015, p. 55. In addition, individuals themselves tend to be more and more cognizant of the Court's regulations and findings, and act accordingly. *See*, FOKAS (E.), « The European Court of Human Rights at the grassroots level: who knows what about religion at the ECtHR and to what effects? », *Religion, State and Society*, 45(3-4), 2017, pp. 249-267.

When, in *Dahlab v. Switzerland*, the Court found the applicant's headscarf "to be imposed on women (…) and (…) hard to square with the principle of gender equality"[145], and therefore "difficult to reconcile (…) with the message of tolerance, respect for others and, above all, equality and non-discrimination that all teachers in a democratic society must convey to their pupils"[146]; when the Court made this finding, it was accordingly stating that any practice or behavior contradicting the stated values were at odds with the Convention and could not benefit from its protection. It was denying Convention's protection for behaviors that contradict this set of values in order to preserve them as the structures governing the dynamics of the society under its jurisdiction. In other words, not offering Convention's protection to the practices that contravene said values amounts, by way of consequence, to protecting those which are structured by them, and the social dynamics they engender. Denying protection for behaviors contradicting the values set by the Court as the Convention's core consequently protects the social state that yields from their daily practice.

Likewise, the Court found Sharia system "stable and invariable"[147], in *Refah Partisi v. Turkey*, hence not leaving room for "pluralism in the political sphere or the constant evolution of public freedoms"[148]. Accordingly, it supported the dissolution measures pronounced by domestic authorities against the party. Endorsing the dissolution for this reason amounts to making mandatory, for any political party, to abide by these principles, consequently favoring diversity of views in society, constant public debate and social change. Is it, in other words, protecting a social state of fact which guarantees free speech, change and evolution, as much as constant adaptation to the new realities of society.

Lastly, when stating, in *Osmanoglu and Kocabac v. Switzerland*, that "the children's interest in an all-round education, facilitating their successful social integration according to local customs and mores, takes precedence over the parents' wish to have their daughters exempted

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[145] *Dahlab v. Switzerland*, p. 6.

[146] *Ibid*.

[147] *Refah Partisi v. Turkey*, para. 123.

[148] *Refah Partisi v. Turkey*, para. 123. The Court notes that, when read together, the offending statements, 'which contain explicit references to the introduction of sharia, are difficult to reconcile with the fundamental principles of democracy, as conceived in the Convention taken as a whole'.

from mixed swimming lessons"[149], the Court found that abiding by the patterns of integration as they existed in Switzerland was more important, in the context of the case, than abiding by religious beliefs. I this case also, the Court was referring to a certain social state, to a certain social configuration, that it favored over religious freedom requirements.

As stems from these three examples, the Court tends to conceive the social values developed in its case-law as the expression of the European society. Following the wording of its judgements, the stated values seem to delimit the scope of the Convention, inasmuch as they are the expression of European society as the Court conceptualizes it. The Convention only applies to practices and behaviors that these values encompass, in that they represent the social ideal for which the Convention exists, for which it applies, in which it is rooted and that it aims to safeguard. In other words, these values appear to be the modalities of a certain social order that the Court seeks to protect. A social order grounded in individual freedom, gender equality, pluralism and democracy, but not only.

In fact, if the Court states some of the values at heart of the Convention in these—selected—examples, its case-law seems to suggest they are not the only ones it relies upon. Rather, values tend to represent a whole set through which the Court views the realities it be facing. In a 2014 case[150], the Court was faced with the claims of a Dutch applicant and the religious association—enjoying legal personality under Dutch law—she was part of[151]. The association was the Dutch component of a religious organization based in Brazil, whose aims was to "research, study and practise the teachings of the Holy Daime and to incite with its works and rituals its godly spark with a view to its integration with the divine"[152]. For that purpose, it was making use of a substance then forbidden under Dutch law[153]. The first applicant was found guilty of the corresponding offense and criminally charged accordingly[154].

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[149] *Osmanoglu and Kocabac v. Switzerland*, paras. 97-98.

[150] ECtHR, Third Section, Decision, 06/05/2014, *Alida Maria Fränklin-Beentjes and Ceflu-Luz Da Floresta v. the Netherlands*, Application n° 28167/07.

[151] *Ibid.*, para. 1.

[152] *Ibid.*, para. 4.

[153] *Ibid.*, paras. 7-8.

[154] *Ibid.*, para. 9.

Before the Court, the applicants were arguing that use of the controversial substance—Ayahuasca[155]—was necessary for their religious practices, as such use "was part of their core beliefs"[156]. In other words, use of the banned substance was a manifestation of their religious freedom as guaranteed by article 9. In order to better illustrate their claim, they brought forth, as a comparison, the ritual of using wine in other religious denominations—to which they added findings of Dutch domestic Courts pointing a misconceived "perception of ayahuasca as harmful when used sacramentally in limited quantities"[157]. But despite these precisions, the Court did not dwell on the arguments brought forth: it only considered the authorities were entitled to prohibit the use of the substance in accordance with article 9 requirement[158]. The comparison with the use of wine by other religious denominations was considered irrelevant[159]. In other words, the Court did not dwell on the comparison, nor did it consider the substances themselves, their characteristics, the regulations followed for their use. It did not consider the concrete effects they would cause their users, or their effects on the latter. It only considered the use as toxic[160], without further elaboration. Consequently, it quashed the applicants' arguments and comparisons for exposing two situations which "differ significantly"[161] from one another.

Such an absence of concrete substantiation, in the Court's judgment, amounts to simply projecting its conceptual categories on the reality it be facing, and ruling accordingly. Despite the similarities in the use and effects of both substances brought forth by the applicants, the Court did not dwell on their arguments. In other words, the Court seems to have discarded the possibility that any comparison be made between wine, a mainstream beverage, and the exotic

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[155] *Ibid.*, para. 5.

[156] *Ibid.*, para. 43.

[157] *Ibid.*, paras. 32, 52. Also, for the domestic Court's findings, paras. 44, and 23-24.

[158] *Ibid.*, para. 48.

[159] *Ibid.*, para. 52, 54. Precisely, paragraph 54 of the decision reads: "the rites referred to differ significantly from those practised by the applicants, most notably – for present purposes – in that participants neither intend nor expect to partake of psychoactive substances to the point of intoxication. The applicants are therefore not in a position relevantly similar to that of the churches with which they compare themselves". Therefore, the Court did not delve into the arguments raised.

[160] *Ibid.*, para. 54.

[161] *Ibid.*

substance used by the applicants. For ignoring the applicants' arguments on this issue, it appears it was relying on what it perceived as 'normal' and ruled accordingly. In other words, despite the similarities brought forth by the applicants regarding both substances, in terms of their nature, their use, and the regulations governing their use; despite these similarities called for an in-depth analysis, the Court relied on its perceptions only to give its ruling. And, unlike such substances as the applicants' ayahuasca, the use of wine appears to be well established in European religious—and social—practices[162].

Therefore, the *modus operandi* followed by the Court in this case appears to be quite the same as the one followed in the aforementioned cases. As in the previously discussed cases, it referred to the social dynamics of European society in order to examine—somewhat new—religious manifestations taking place within the latter. It resorted to the values and patterns structuring European society to confront the manifestations, examine their meaning and the principles or values on which they rest[163], and then rule accordingly. This matrix of values that stems from its reasoning appears to be its heuristic tool for examining, qualifying and ruling upon the religious manifestations presented to its assessment. The values making this matrix appear to be the patterns governing the European society, in its religious dimension, as shaped by the long historical dynamics governing its relationships with Religion.

Such a conception amounts to consecrating a European social order—at least in the religious sphere—in which each state develops its own features, and adds a touch of its particular diversity to the common European ground. The Court is indeed aware of the diversity reigning among its member states[164], and avoids, by way of consequence, to rule on matters that bring it forth. Therefore, when religious manifestations put forth considerations which fall into the realm of state particularities, the Court relinquishes to rule upon them, preferring

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[162] Several cases of a same nature have been animating courtly debates and judgments around the world, starting with domestic Courts. One of the most famous of these cases being United States Supreme Court's Peyote case. The latter's treatment of the issue contracts with the Court's treatment in the details and depth of its analyzes. As a legal issue, use of such substances seems to be developing, has even reached the human rights field and human rights protection bodies. For example, *see* HRC, Views, 31/10/2007, *Prince v. South Africa*, communication n° 1474/2006. Also, *see* CAIUBY LEBATE (B.), CAVNAR (C.), *Prohibition, Religious Freedom, and Human Rights: Regulating Traditional Drug Use*, 2016, Heidelberg, Springer, pp. 45-131.

[163] *See*, *supra,* Section II. Values: the cornerstone of individual guarantees.

[164] As argued in footnote 53, it is the *raison d'être* of the Court's doctrine of national margin of appreciation.

to leave for each state the responsibility to act as it sees fit[165]. That is what occurs, for example, when the state considers a matter to infringe upon its 'sociability space'.

B. A national space of sociability: A space of sociability is a space where individuals are able to meet and interact, in order to make bonds with one another. Such interactions constitute a specific social dynamic; they rely on intangible principles shared by individuals who follow them implicitly, and can manifest in a variety of ways. In short, such a space supposes a value order that enables individuals to implicitly understand each other when interacting, therefore facilitating the creation of bonds between them. Given individual behavior is key in this process, religious manifestations can have an impact on the process of socializing.

In some cases brought before the Court, which involved religious manifestations forbidden by domestic authorities, defending governments were arguing restrictions were enacted in order to maintain a space of a social interactions. That is, they pronounced restrictions, which ended being the heart of the case, in order to preserve a space where individuals could interact normally, without disturbance. In *Gough v. The United Kingdom*, for example, the applicant, who firmly held "belief in the inoffensiveness of the human body"[166], was prosecuted and convicted several times for walking bare naked in public[167]. The offense he was charged with was then "breach of peace"[168]. Delving into the case, the Court first stated that issues of a moral nature give way to a wide margin of appreciation for states, since there is no consensus on the matter in between its state parties[169]. Then it added that, still, expressing one's belief[170] "does not go so far as to enable individuals, even those sincerely convinced of the virtue of their own beliefs, to repeatedly impose their antisocial conduct on other, unwilling members

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[165] ECtHR, Grand Chamber, Judgment, 01/07/2014, *S.A.S. v. France*, Application n° 43835/11; ECtHR, Second Section, Judgment, 11/07/2017, *Dakir v. Belgium*, Application n° 4619/12; ECtHR, Fourth Section, Judgment, 28/10/2014, *Gough v. The United Kingdom*, Application n° 49327/11.

[166] *Gough v. The United Kingdom*, para. 6.

[167] *Ibid.*, paras. 8-99.

[168] *Ibid.*, para. 146, 171.

[169] *Ibid.*, para. 166, 172.

[170] The litigation was mainly conducted under article 10.

of society"[171]. In other words, the applicant's behavior strongly disturbed the established social order; it was executed in a way that clashed frontally with society's premises. It clashed so frontally with what society would have been able to accept that it amounted to an "antisocial conduct"[172]. That is, it was in contradiction with the values at work in the social space, and, consequently, was found to be legitimately forbidden by state authorities[173].

In two later cases[174], where applicants were claiming a breach of their rights by laws prohibiting wearing of full-face veil in public, defending governments argued, more precisely, the prohibition was necessary to maintain a spirit of "living together"[175] in society. In other words, the particular configuration of society impeded such behavior from taking place, for the reigning values of the one were incompatible with those inspiring the other. When assessing these arguments, the Court, which could not find any commonality domestic regulations of the matter, stated the latter fell into state's margin of appreciation[176]. In this case, the margin of appreciation was wide, given what was at stake is a choice of society[177].

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[171] *Gough v. The United Kingdom*, para. 176.

[172] *Ibid.*, para. 176.

[173] *Ibid.*, para. 176. Prior to its conclusion, the Court made a statement affirming the importance of respect by the State of the views of minorities, which "ensures cohesive and stable pluralism and promotes harmony and tolerance in society''. The limit being, it its words, that such views and consequent conducts ought to not be "*per se* incompatible with the values of a democratic society or wholly outside the norms of conduct of such a society''. *See*, *ibid.*, para. 168.

[174] *S.A.S. v. France*, *Dakir v. Belgium*.

[175] *S.A.S. v. France*, para. 82. More precisely, the argumentation developed by the government was three-layered. Under the umbrella of "respect for the minimum set of values of an open and democratic society'', as consecrated by the Court in previous cases, it advocated that the prohibition was enacted for "[f]irstly, the observance of the minimum requirements of life in society. In the Government's submission, the face plays a significant role in human interaction: more so than any other part of the body, the face expresses the existence of the individual as a unique person, and reflects one's shared humanity with the interlocutor, at the same time as one's otherness. The effect of concealing one's face in public places is to break social ties and to manifest a refusal of the principle of 'living together' (*le "vivre ensemble"*). The Government further argued that the ban sought to protect equality between men and women, as to consider that women, solely on the ground that they were women, must conceal their faces in public places, amounted to denying them the right to exist as individuals and to reserving the expression of their individuality to the private family space or to an exclusively female space. Lastly, it was a matter of respect for human dignity, since the women who wore such clothing were therefore 'effaced' from the public space. In the Government's view, whether such 'effacement' was desired or suffered, it was necessarily dehumanising and could hardly be regarded as consistent with human dignity". *See S.A.S. v. France*, para. 82.

[176] *S.A.S. v. France*, para. 130.

[177] *S.A.S. v. France*, paras. 153, 155.

In other words, it is not the mandate of the Court, as it conceives it, to make any finding which could impact the specific configuration of a society. Such an impact exceeds the scope of its jurisdiction. Instead, it only makes statements or findings of such a nature when the issues or their regulation be shared by its state-parties. That is, when a consensus emerges from them on the latter[178]. Therefore, the argument consisting in defending precise modalities of interaction between individuals is so particular to each society that it neutralizes the jurisdiction of the Court and its mandate to rule[179].

Through these cases, the Court seems to have reached a third step in the development of its religious jurisprudence. If it previously affirmed and used social values[180] as legal principles for its member-states to abide by, and for itself to interpret the Convention, it seems the latter cases brought it before the limit of its approach. Its classical *modus operandi* appears therefore to be limited by the particular—national—features of the societies that compose its jurisdiction. Whenever an issue raised by a litigant touches upon a choice of society, the Court seems to relinquish from enacting any regulation which could have an impact thereon.

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[178] The first spark of this 'consensus' doctrine dates from ECtHR, Chamber, Judgment, 28/11/1984, *Rasmussen v. Denmark*, Application n° 8777/79, para. 40 where the Court declares the "scope of the margin of appreciation will vary according to the circumstances, the subject-matter and its background; in this respect, one of the relevant factors may be the existence or non-existence of common ground between the laws of the Contracting States".

[179] That is why its scope was limited by the Court in the judgment, and by judges through separate opinions. In addition, it appears to be an equivocal notion, unlikely to bear any precise and concrete meaning as necessary for legal purposes. Judges Nussberger and Jäderblom, for example, argued in their dissenting opinion following *S.A.S. v. France*, that it is not clear "what may constitute 'the rights and freedoms of others' outside the scope of rights protected by the Convention. The very general concept of 'living together' does not fall directly under any of the rights and freedoms guaranteed within the Convention. Even if it could arguably be regarded as touching upon several rights, such as the right to respect for private life (Article 8) and the right not to be discriminated against (Article 14), the concept seems far-fetched and vague". *See*, Dissenting opinion, para. 5. Following ECtHR, Second Section, Judgment 11/07/2017, *Dakir v. Belgium*, Application n° 4619/12, Judge Spano—joined by Judge Karakas—restated these ideas and further added some elaborations on these of such notion that could ultimately hamper democracy and human rights in the name of majority's will. In his own words: "it is difficult to define which 'concrete rights of others within the meaning of Article 8 § 2 and Article 9 § 2 of the Convention could be inferred from the abstract principle of 'living together' or from the 'minimum requirements' of life in society' (…). In other words, the substance of the 'living together' principle is so malleable and unclear that it can potentially serve as a rhetorical tool for regulating any human interaction or behaviour purely on the basis of a particular view of what constitutes the 'right way' for people to interact in a democratic society. That is anathema to the fundamental values of the autonomy of self, human dignity, tolerance and broadmindedness which are the foundations of the Convention system (…). History has amply demonstrated that there is an inherent risk in democratic societies that majoritarian sentiments, subsequently translated into legislative enactments, are formed on the basis of ideas and values which threaten fundamental human rights (…). It follows that public animus and intolerance towards a particular group of persons can never justifiably restrict Convention rights". *See*, Concurring opinion, paras. 6, 9, 13. The same considerations were developed by the same judges in a Concurring opinion in ECtHR, Second Section, Judgment, 11/07/2017, *Belcacemi and Oussar v. Belgium*, Application n° 37798/13.

[180] On the 'social' character of the values used, *see infra*, IV. Pluralism as Oligopoly.

Instead, it only consecrates what would be the object of a consensus among its state parties. In other words, its classic *modus operandi*, as discussed previously, consists in enacting a sort of umbrella of values under which national societies evolve and mutate with their own characteristics and features. An umbrella that only integrates more elements, more values and basic principles, when the latter be consecrated domestically, and come to be subject to a wide consensus across its state-parties.

If any value, principle, or else regulation is not shared by member-states, the Court does not use them as principles for states to apply. It only considers, to this specific end, those values which appear to be common to them. These values being the ones that unify its member-states into a larger, consistent and more integrated entity. The Court's regulation of religious individual behavior thus yields in fostering common social practices, a common meaning for the latter, thus fostering the development and maintenance of a common socio-cultural space —the European society. Furthermore, the same approach extends also to institutional dynamics, as the Court proceeds to unifying domestic systems of interaction with religions around a set of same principles.

III. Values: a framework structure for State and Church relationships.

Following the same logic, rationale and pedagogical approach, the Court's use of values in matters of state and Church relationships aims at including the diversity of domestic systems within its jurisdiction into one unified global framework. That is, parting from the observable diversity of its member-states (1), its concern is for states to abide by Convention's basic principles when interacting with religions and religious groups. Said principles unify domestic systems into a global framework (2), which is said to be unique to Europe[181].

[181] REMOND (R.), *Religion et Société en Europe. La sécularisation aux XIXe et XXe siècles 1780-2000*, Paris, Editions du Seuil, 2001, pp. 215-222.

1. Respecting the distinctiveness of diverse European traditions.

Religion is a quite a specific social force. It counts even among the most powerful social forces. But it remains a social force, and, as such, it is one force among the whole set of forces, streams, and dynamics whose interactions make-up the specific state of a society at a given time. Reduced to its most essential substance, Religion remains a set of ideas—whose specificity is to deliver truths upon such concepts as Life, Death, the real nature of the material world and that "*another-world (behind, below, above)*"[182] which gives meaning to the latter. In fact, when it comes to endowing existence with meaning, Religion appears to be the most penetrating sets of ideas.

In addition, unlike other sets of ideas of the same or similar nature, one of the core distinctive features of religions is their institutionalization and proper incarnation in society. For they seek to teach complex doctrines to all members of a society and accompany them throughout their existence, religions tend to be incarnated into leading authorities, communities, churches, temples or leading scholars in order for them to supply believers with the necessary services.

Henceforth, throughout History, religions have had to adapt and deal with established centers of power, ranging from public institutions and governing entities to popular ideas and ideologies. In other words, religions have constantly had to deal with both a socio-cultural configuration on the one hand, with its practices and ways of thinking, and power holders on the other hand, which have proven to considerably affect religions' development within society.

It seems indeed the fate of religions to undergo this dual process, entrenched in between the dynamics of state regulation and those of social recognition. These dynamics, which are proper to each society, ultimately settle the fate of a religion in the latter. They are the terms upon which a religion negotiates its presence therein.

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[182] NIETZSCHE (F.), *The Gay Science*, New York, Vintage Books, 1974, para. 151, p. 196.

More precisely, the historical trajectory of societies, the importance of religion within the latter, the weight of ecclesiastical figures upon states or governing authorities and the modalities organizing the corresponding interactions, the progressive rationalization and formalization of the latter and the ways taken by one or the other authority to dominate their counterpart; all these factors intervened directly in the gradual formalizing process that culminated in modern state-Church relationships. Being multi-dimensional historical constructs, the process underlying their emergence and development appears to be decisive in their present heterogeneity[183].

The Court's judgments show an explicit acknowledgement of this state of fact. In various cases, the Court found that "any such scheme [of state and Church relationships] normally belongs to the historical-constitutional traditions of those countries which operate it, and a state-Church system may be considered compatible with article 9 of the Convention in particular if it is part of a situation pre-dating the Contracting State's ratification of the Convention"[184]. That is, Convention's article 9 does not require member-states to create any

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[183] Indeed, systems in force in Europe seem to emanate from a basic conceptual divide regarding the role of the state when facing religions. This divide, between an interventionist stance and a more liberal individualistic posture, gives way to two major legal approaches. On the one hand, some states recognize religions as special phenomena, and grant them specific status and prerogatives in accordance with their needs. On the other hand, other states consider religions as mere socio-intellectual phenomena, and therefore treat them as any other socio-intellectual phenomena such as ideologies. The Spanish model of 'Aconfesionalidad', for example, recognizes and cooperates with religions on a scale which depends on the category in which the latter fall, which depends on their proper characteristics. *See*, Pleno, STC 46/2001 of 15 February 2001, Amparo application n° 3083/96, Fundamentos Jurídicos 3-9. *See also,* DÍEZ DE VELASCO (J.), « The Visibilization of Religious Minorities in Spain », *Social Compass*, 57(2), 2010, pp. 246-248. The Polish system, on the other hand, which legally recognizes religious communities on an equal footing, seems to be *de facto* favoring the Catholic Cristian community due to a lack of religious diversity in society. *See*, TOPIDI (K.), « Religious Freedom, National Identity, and the Polish Catholic Church: Converging Visions of Nation and God », *Religions*, 10(5), 2019, pp. 300-309. In contrast to this type of 'recognition' systems, the second type proceeds to a sort of leveling of religions with ideologies. Such is the case with the French and the Belgian systems, for example, which are two alternative approaches to 'Laïcité' concept. 1905 French law on religious neutrality of the state does not endow religions with the special features that distinguish them from ideologies or systems of thought. It deprives religions from said features, therefore neutralizing the power they could behold when addressing institutions and state entities. *See*, BRIAND (A.), *La Séparation. Discussion de la Loi*, Paris, Bibliothèque Charpentier, 1908, 346 p. The Belgian Constitution and 2002 law on non-religious communities and their representatives, for their part, consider Laïcité as a proper belief—therefore the belief of non-believers—, equal to religious beliefs.

[184] ECtHR, Second Section, 08/04/2014, *Magyar Keresztény Mennonita Egyház and Others v. Hungary*, Applications n° 0945/11, 23611/12, 26998/12, 41150/12, 41155/12, 41463/12, 41553/12, 54977/12 and 56581/12, para. 100. *See* also, on various themes, ECtHR, Fifth Section, Judgment, 17/02/2011, *Wasmuth v. Germany*, Application n° 12884/03 para. 63; ECtHR, Grand Chamber, Judgment, 09/07/2013, *Sindicatul 'Păstorul Cel Bun' v. Rumania*, Application n° 2330/09, para. 133, *in fine*; ECtHR, Fourth Section, Decision, 14/06/2001, *Alujer Fernandez and Caballero García v. Spain*, Application n° 53072/99; ECtHR, Third Section, Decision, 29/03/2007, *Spampinato v. Italy*, Application n° 23123/04; ECtHR, Fifth Section, Judgment, 04/12/2008, *Kervanci v. France*, Application n° 31645/04, para. 71; ECtHR, Fifth Section, Judgment, 04/12/2008, *Dogru v. France*, Application n° 27058/05, para. 72; ECtHR, 27/06/2000, Judgment, *Cha'are Shalom Ve Tsedek v. France*, Application n° 27417/95, para. 84.

particular legal framework, nor does it warrant states to endow religious communities with a special status or specific privileges[185]. Rather, states enjoy "a margin of appreciation in choosing the forms of cooperation with the various religious communities"[186].

As an example, in *Wasmuth v. Germany*, the applicant requested the municipality to issue him a new taxation card, one that would not mention his religious affiliation[187]. The municipality refused his request[188], for such an information aimed at preventing him from being subject to the Church tax[189]. When assessing the case, the Court did not dwell on the possibility for Churches to raise taxes *via* state intervention, or on the correct modality for states to finance Churches, or on whether state financing was in keeping with state neutrality before religious matters. Instead, it found the measure in conformity with article 9 requirements, "given the margin of appreciation granted to states concerning relationships between state and religions in the absence of common regulations in matters of financing Churches and religions"[190] [unofficial translation]. Then it added: "these matters [are] closely linked to the History and traditions of each country"[191] [unofficial translation].

In *Sindicatul 'Pãstorul Cel Bun' v. Rumania*, 32 Orthodox priests, joined with lay employees of the same archdiocese, had formed a trade union in order to assist clergy members and lay workers in their interactions with Church's hierarchy and the Ministry of Religious Affairs[192].

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[185] ECtHR, Second Section, Judgment, 08/06/2021, *Ancient Baltic Religious Association Romuva v. Lithuania*, Application n° 48329/19, para. 126.

[186] *Ancient Baltic Religious Association Romuva v. Lithuania*, para. 126; *Magyar Keresztény Mennonita Egyház and Others v. Hungary*, para. 108. Also, referring to religious expressions rather than religious communities exclusively, *see* ECtHR, Third Section, Judgment, 10/01/2017, *Osmanoğlu et Kocabaş v. Switzerland*, Application n° 29086/12, para. 88; ECtHR, Grand Chamber, Judgment, 10/11/2005, *Leyla Şahin v. Turkey*, Application n° 44774/98, para. 109.

[187] *Wasmuth v. Germany*, para. 9.

[188] *Ibid.*

[189] *Ibid*., para. 62.

[190] *Ibid*., para. 63. *See* also ECtHR, Chamber, Judgment, 23/10/1990, *Darby v. Sweden*, Application n° 11581/85, case where the Court found a state-Church system in keeping with the Convention's requirements.

[191] The original *dictum*, in French language, reads as follows: "eu égard à la marge d'appréciation dont bénéficient les Etats notamment en ce qui concerne les rapports entre l'Etat et les religions en l'absence de normes communes en matière de financement des Eglises et cultes, ces questions étant étroitement liées à l'histoire et aux traditions de chaque pays". *See*, *Wasmuth v. Germany*, para. 63.

[192] *Sindicatul 'Pãstorul Cel Bun' v. Rumania*, para. 10.

The creation of the trade union was challenged by the Archdiocese before the courts, for issues involving clergy and lay people working for the Church were under the exclusive jurisdiction of the Church[193]. Thus, the Court was facing a complex case where autonomy of religious communities was clashing with the right of individuals to freedom of assembly through trade unions.

Consequently, the Court proceeded first with acknowledging the wide variety of constitutional models governing relations between States and religious denominations in Europe[194]. Then it stated that, "[h]aving regard to the lack of a European consensus on this matter (…), it consider[ed] that the State enjoys a wider margin of appreciation in this sphere, encompassing the right to decide whether or not to recognise trade unions that operate within religious communities and pursue aims that might hinder the exercise of such communities' autonomy"[195].

Lastly, said margin of appreciation extends even to public education, when the curriculum provides teachings on religion. When assessing this issue, indeed, the Court "bears in mind that the States enjoy a considerable margin of appreciation concerning matters relating to the relationship between the State and religions and the significance to be attached to religion in society, particularly where these matters arise in the sphere of teaching and State education"[196]. Consequently, it declared providing for religious education is not contrary to the Convention—provided states put in place exemption procedures[197].

As case-law indicates, the Court is not willing to enact any one system regulating state and Church relationships for all its member-states to adopt. It leaves them free to construct any system they see fit according to their historical dynamics. In other words, the choice of the Court in this matter is that of accompanying states in their evolution, starting from their own

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[193] *Sindicatul 'Pãstorul Cel Bun' v. Rumania*, paras. 13, 17, 20, 24 *in fine*.

[194] *Ibid*., para. 177.

[195] *Ibid.*

[196] *Osmanoğlu et Kocabaş v. Switzerland*, para. 95.

[197] *See*, *inter alia*, ECtHR, Grand Chamber, Judgment, 29/06/2007, *Folgerø and Others v. Norway*, Application n° 15472/02.

regulations, rather than controlling their fate by imposing any one single conception. As with individual religious freedom, the Court's choice is to enact a common regulation only when member-states share a common vision, a common approach, or similar sets of regulations[198]. It can even take into account the common values stemming from their practice[199]. When such commonalities do not appear, however, the Court leaves each state to act individually, and independently of every other.

This being said, such liberty remains enshrined into certain limits. The Court, indeed, also "emphasises (…) that the reference to a tradition cannot relieve a Contracting State of its obligation to respect the rights and freedoms enshrined in the Convention and its Protocols"[200]. Hence the Court controls that, even when acting within their margin of appreciation, states do not hamper the basic principles on which the Convention rests. As with individual exercise of religious freedom, it is through these principles that it proceeds to unifying and integrating European states into one global space of shared practices.

2. Unifying the diverse European traditions.

In order to ensure states domestic systems abide by Convention requirements, the Court controls their adequacy to the bases of the Convention. More precisely, it controls that the systems respect the fundamental values of European society, which are the basic principles upon which the Convention rests (A). There lies its primary concern: sharing the same premises as the Convention shows whether a system is in line with the Convention or not, whichever the concrete procedures that compose it. Only then, when the nature of the domestic systems allows, the Court delves further into its concrete provisions and procedures provided for (B).

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198 *Osmanoğlu et Kocabaş v. Switzerland*, para. 89.

199 *Ibid*.; ECtHR, Fourth Section, Judgment, 05/12/2017, *Hamidović v. Bosnia and Herzegovina*, Application n° 57792/15, para. 38; ECtHR, Grand Chamber, Judgment, 01/07/2014, *S.A.S. v. France*, Application n° 43835/11, paras. 129-131; ECtHR, Grand Chamber, Judgment, 07/07/2011, *Bayatyan v. Armenia*, Application n° 23459/03, para. 122; ECtHR, Second Section, Judgment, 11/07/2017, *Dakir v. Belgium*, Application n° 4619/12, para. 54; ECtHR, Second Section, Judgment, 11/07/2017, *Belcacemi and Oussar v. Belgium*, Application n° 37798/13, para. 54.

200 ECtHR, Grand Chamber, Judgment, 18/03/2011, *Lautsi and Others v. Italy*, Application n° 30814/06, para. 68.

Doing so enshrines the systems in force within the Court's jurisdiction into a global framework of values, ensuring they be consistent with the Convention. Eventually, in order for this action to be carried on all dimensions involved by state and Church relationships, the values serving as basis for Court's control tend to vary from one case to another, according to the dimensions the latter bring forth (C).

A. An external—European—container: As mentioned above, several cases have been raised to the Court's attention that questioned, in multiple ways, domestic state and Church relationships systems' conformity to the Convention. In *Dogru v. France*, for example, a secondary school pupil was required by the school authorities to take off her veil during physical education classes[201]. The Court had therefore to confront the pupil's claim for religious freedom—wearing her religious garment—with the mandate expressed by school authorities not to proceed, justified as a Laïcité commandment[202]. At the heart of the case, therefore, was the Laïcité system as such, given it was the basis of the measures taken by school authorities[203].

In *Ebrahimian v. France*, the Court had to face the claim of a hospital agent, whose contract renewal was denied for she was wearing a head covering that "resembles a scarf or an Islamic veil"[204]. In other words, her head covering being a 'headscarf', as interpreted by domestic Courts[205], she was in breach of public hospital regulations stemming from *Laïcité* principle[206].

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[201] *Dogru v. France*, para. 7.

[202] Before the Court, the French government had indeed argued "the measure in question had mainly been based on the constitutional principles of secularism and gender equality. In that connection they submitted that the French conception of secularism respected the principles and values protected by the Convention. It permitted the peaceful coexistence of people belonging to different faiths, while maintaining the neutrality of the public arena". *See*, *Dogru v. France*, para. 37. In fact, the defending government pointed even to the similarities of the case with a former case that had given way, a couple of years earlier, to one of the most basic judgments of the Court: *Leyla Sahin*. In this latter case, indeed, Turkish university "invigilators [denied the applicant access] to a written examination (…) because she was wearing the Islamic headscarf". *See*, *Leyla Şahin v. Turkey*, para. 17. On the other side of the litigation, the applicant had argued that the interference she had undergone was not mandated by any legally binding document—the facts occurred before 2004 Law banning religious manifestations in schools. *See*, *Dogru v. France*, paras. 43-44. The heart of the case, as raised before the Court, was therefore the French Laïcité model as such: the issue was the first to settle before passing to any other.

[203] *Dogru v. France*, para. 37.

[204] ECtHR, Fifth Section, Judgment, 26/11/2015, *Ebrahimian v. France*, Application n° 64846/11, para. 46.

[205] *Ibid.*

[206] *Ibid.*, paras. 47, 50-51, 53.

In yet another seminal case, *Refah Partisi v. Turkey*[207], the Court had to examine a dissolution measure pronounced by Turkish Constitutional Court against a political party which had become a centre "of activities contrary to the principles of secularism"[208]. Based on speeches and discourses of some of its members[209], the Constitutional Court had found the party's activities violated the Turkish constitutional principle of secularism.

Despite their diversity, despite the diversity in claims and contextual backgrounds, all these cases directly questioned the principle of secularism in relation to the Convention. They brought, for the Court to examine, the application of said principle to the specific facts at hand[210]. In *Dogru v. France*, the parties were contending whether the measure applied to the pupil was in keeping with the Convention, on the one hand, and whether it was a lawful application of the constitutional principle of secularism on the other hand[211]. In other words, the case questioned whether government's interpretation of secularism principle was in keeping with the Convention, which carried along the issue of which interpretation—the one advocated by the applicant or the one defended by the government—to endow secularism, as a principle, within the French context. Similarly, in *Ebrahimian v. France*, the applicant was arguing that French *Laïcité* did not prevent workers like her, which were not civil servants, from wearing any religious clothes at work[212]. Therefore, her understanding of *Laïcité* being distinct from the defending government's, the Court was to settle which interpretation was in keeping with the Convention before dwelling on the case itself.

When addressing the case, however, the Court did not respond to this specific issue. In fact, the Court did not address it; it did not lay any analysis thereof. Instead, it elaborated on a larger dimension, more global, which encompasses it without touching upon it directly. It is

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[207] ECtHR, Grand Chamber, Judgment, 13/02/2003, *Refah Partisi (Welfare Party) v. Turkey*, Application n°41340/98, 41342/98, 41343/98 and 41344/98.

[208] *Ibid.*, para. 12.

[209] *Ibid*.

[210] *Dogru v. France*, para. 37.

[211] *Ibid.*, paras. 35-38, 43-44.

[212] *Ebrahimian v. France*, para. 36.

through these large and abstract elaborations that the Court gave its answer to the issues at stake. Precisely, it emphasized "the State's role as the neutral and impartial organiser of the exercise of various religions, faiths and beliefs, and stated that this role is conducive to public order, religious harmony and tolerance in a democratic society"[213]. A stance, as the Court went on affirming, that required the state to ensure tolerance in between stakeholders rather than to "remove the cause of tension by eliminating pluralism"[214].

Likewise, when assessing the measure forbidding a student to sit her exam in *Leyla Sahin v. Turkey*, the Court declared "the role of the authorities (…) is not to remove the cause of tension by eliminating pluralism, but to ensure that the competing groups tolerate each other".[215] And it went down elaborating on how a state, in such circumstances as those of the case, had to conceal different views, arbitrate competing claims, ensure the exercise of conflicting rights in order to respect "[p]luralism, tolerance and broadmindedness [which] are hallmarks of a 'democratic society'"[216].

In both cases, the Court elaborated on an abstract dimension, detached from the facts at hand, to deliver its final solution to the case. In both cases, it found the limitation of the claimant's right in keeping with the Convention. In its own words: "the impugned interference can be regarded as proportionate to the aims pursued"[217]. In other words, given the authorities' limitation measures aimed at safeguarding such values as tolerance, pluralism, broadmindedness, said measures were in keeping with the Convention. The Court's assessment gravitated exclusively around the principles inspiring the measures, instead of dwelling on the measure itself or its consequences on the applicant's individual condition. That is how the Court seems to proceed when applicants question the very system regulating interactions between states and religions: it controls which principles said systems seek to protect and guarantee, without further elaboration. That is, its concern is primarily the

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[213] *Ebrahimian v. France*, para. 55.

[214] *Ibid.*

[215] *Leyla Şahin v. Turkey*, para. 107.

[216] *Ibid.*, para. 108.

[217] *Ibid.*, para. 72. *See* also *ibid.*, para. 122.

principles by which said systems abide. It controls whether they respect the fundamental values upon which the whole convention rests, and, depending on whether they do abide by them or not, it gives its conclusion on the legal issue.

Given its reluctance to control any state and Church relationship system in itself, the Court does not prescribe any procedure or modality as such for states to follow in that matter. Rather, it focuses on the latter's conformity to the global framework of the Convention. The idea being that whenever a system is in line with Convention's conceptual premises, it is, by way of consequence, in line with its legal requirements. Hence the Court controls whether the patterns of the system be identical to those of the Convention, whether the adopted system aims at fulfilling the fundamental values upon which the Convention rests. Such reliance precludes the Court's solution to the cases: by the fact that they abide by the Convention's values, the measures imposed on the litigants appear to be, *ipso facto*, lawful to the Convention[218].

That is how, in the aforementioned *Ebrahimian v. France*, the Court had first stressed "that upholding the principle of secularism is an objective that is compatible with the values underlying the Convention"[219].

[218] Henceforth being "proportionate in a democratic society", as article 9-2 states. Such an approach yields in 'erasing' litigants' condition and proper context behind abstract developments on values which put aside the issue of their concrete religious freedom. BURGORGUE-LARSEN (L.) et DUBOUT (E.), « Le port du voile à l'université… », p. 197; PERONI (L.), « Religion and culture in the discourse of the European Court of Human Rights: the risks of stereotyping and naturalising », *International Journal of Law in Context*, 10(2), 2014, pp. 201-205. Also, CHAIBI (M.), *L'Islam dans la jurisprudence de la Cour Européenne des droits de l'Homme*, pp. 48-49.

[219] *Ebrahimian v. France*, para. 53.

The French principle of secularism obeys to the same rationale, values and ideals, as the Convention's. Consequently, the measures opposed to applicants could "be regarded as proportionate to the aims pursued"[220]— they sought to safeguard Convention values[221].

European values are the basis on which the Convention is built, the patterns of its action, and the primary aims states have to pursue when applying the Convention[222]. In fact, values are so important for Convention's application that the Court found "freedom to manifest one's religion [under the European Convention of Human Rights] could be restricted in order to defend those values"[223].

In the cases discussed, the Court has been adopting an external stance when exploring the impugned systems. It did not delve into the systems, their procedures and modalities. Rather, it proceeded to determine whether they abide by Convention's basic values and principles exclusively. In other words, it only examined their conceptual premises, delimiting the external constraints states have to respect. In those cases as the ones mentioned so far, the systems involved formed part of those which do not recognize religion or endow it with any special status. As a consequence, they do not provide any procedure for the Court to examine; the latter can only assess the systems' conformity to the Convention through their aims and governing patterns. That is, the Court examined these systems almost exclusively on the philosophical level, for lack of any further procedure or modality. From this external assessment, it ruled on the measures adopted. When addressing systems which recognize religion and regulate it, however, the Court still shows the same type of control, but goes further this time: it also examines the procedures in force themselves.

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[220] *Ibid*., paras. 60-71.

[221] *Ibid.*, para. 72. The Court developed the same rationale in the aforementioned *Dogru v. France*, para. 66 and *Leyla Sahin v. Turkey*, paras. 112-115. *See* also, *inter alia*, ECtHR, Fifth Section, Judgment, 04/12/2008, *Kervanci v. France*, Application n° 31645/04; ECtHR, Grand Chamber, Judgment, 13/02/2003, *Refah Partisi (Welfare Party) v. Turkey*, Application n°41340/98, 41342/98, 41343/98 and 41344/98; ECtHR, Fifth Section, Judgment, 04/12/2008, *Dogru v. France*, Application n° 27058/05; ECtHR, Fourth Section, Judgment, 05/12/2017, *Hamidović v. Bosnia and Herzegovina*, Application n° 57792/15; ECtHR, Second Section, Decision, 24/01/2006, *Şefika Köse and 93 Others v. Turkey*, Application n° 26625/02; ECtHR, Third Section, Judgment, 10/01/2017, *Osmanoğlu et Kocabaş v. Switzerland*, Application n° 29086/12; ECtHR, Grand Chamber, Judgment, 19/12/2018, *Molla Sali v. Greece*, Application n° 20452/14.

[222] *See supra*, Section I. The Values and the Law in the European Convention on Human Rights.

[223] *Leyla Sahin v. Turkey*, paras. 112-115. The subsequent judgments quote this case as precedent.

B. A European rationalization of proceedings: Systems recognizing religions are characterized by two main features. First, they establish procedures for religions to follow in order to pursue legal recognition. Second, they grant thus recognized religions a certain number of services, favors, and privileges. Therefore, issues can arise in relation with recognition procedures; and the very existence of privileges can induce a breach of equal treatment.

Lithuania, for example, recognizes three types of religious communities: traditional religious associations, non-traditional religious associations recognized by the State, and other religious associations[224]. Following official recognition of several religious communities[225], a religious association of old Baltic pagan faiths introduced a demand for official recognition as well[226]. The demand was subject to a political debate in the Lithuanian Parliament, which, despite Ministry of Justice's approval, yielded in a refusal[227]. In other words, the process of recognition involved a political debate in Parliament, a procedure of a political nature, and involved representatives of the majority religion[228]. Consequently, the refusal was challenged before domestic courts and reached the European Court of Human Rights.

The Court faced this issue in several cases. Several religious communities were denied recognition by states, for several distinct reasons[229]. Faithful to its basic stance, the Court did

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224 *Ancient Baltic Religious Association Romuva v. Lithuania*, para. 4.

225 *Ibid.*, paras. 8-13.

226 *Ibid.*, para. 16.

227 *Ibid.*, paras. 18-19, 31.

228 A letter of the president of the Lithuanian Bishops' Conference was sent to members of the Parliament and circulated among them. *See*, *ibid.*, paras. 25-29.

229 *See*, *inter alia*, ECtHR, Fifth Section, Judgment, 15/06/2017, *Metodiev and others v. Bulgaria*, Application n° 58088/08 and ECtHR, Fifth Section, Judgment, 23/03/2017, *Genov v. Bulgaria*, Application n° 40524/08 and also ECtHR, Third Section, Judgment, 17/07/2012, *Fusu Arcadie and Others v. The Republic of Moldova*, Application n° 22218/06, all involving state authorities denying recognition for a religious community because of the existence of a similar community professing the same religion; ECtHR, First Section, Judgment, 02/20/2014, *Church of Scientology of St Petersburg and Others v. Russia,* Application n° 47191/06, where state authorities proved to be somewhat reluctant to grant the recognition; ECtHR, Fifth Section, Judgment, 27/01/2011, *Boychev and Others v. Bulgaria*, Application n° 77185/01, where state authorities supposedly remained silent before the community's demand; ECtHR, Second Section, 08/04/2014, *Magyar Keresztény Mennonita Egyház and Others v. Hungary*, Applications n° 0945/11, 23611/12, 26998/12, 41150/12, 41155/12, 41463/12, 41553/12, 54977/12 and 56581/12, where a change in legislation lead a community to losing its status of recognized religious community.

not dwell, in its judgments, on the existing procedures for recognition. That is, it did not examine the modalities making-up these procedures or the criteria they lay down. Rather, it tended to make sure that states, in carrying them through, were adopting the suitable stance. In other words, the procedures provided for recognizing religious communities, or the criteria set for said recognition to be granted, were not relevant in themselves. What was paramount for the Court was that states, when executing these procedures, abided by the basic principles to adopt when interacting with religious communities.

In the aforementioned *Ancient Baltic Religious Association Romuva v. Lithuania*, the Court pointed to the absence of objective criteria governing the recognition procedure[230], which was, furthermore, carried-out by a political body—the Lithuanian Parliament—and consequently bore the risk of politicization[231]. In addition, recognition required the authorization of a recognized ecclesiastical authority, which happened to be that of majoritarian Catholic Church[232]. As a result, the existing procedure lacked objectivity, and aimed at questioning the 'religious nature' of the association[233]. Lithuanian authorities were thus in breach of their 'duty of neutrality and impartiality'[234] in religious matters[235].

Similarly, in *Metodiev v. Bulgaria*, state authorities had denied registration to a newly constituted religious association, for said registration "would lead them to enter into a theological debate on the issue of whether the Ahmadis [community] formed indeed part of

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[230] *Ancient Baltic Religious Association Romuva v. Lithuania*, para. 133.

[231] *Ibid.*, para. 134.

[232] *Ibid.*, para. 144.

[233] *Ibid.*, para. 134.

[234] *Ibid.*, para. 144. The Court goes even further, stating the fact that contradicting the majority religion is no objective or reasonable reason for any differentiation to take place in the treatment of religious communities. In its proper words: "the Court is unable to accept that the existence of a religion to which the majority of the population adheres, or any alleged tension between the applicant association and the majority religion, or the opposition of an authority of that religion, could constitute objective and reasonable justification for refusing State recognition to the applicant association (…). Lastly, with regard to the Government's contention that in most Catholic countries of Europe no pagan movements enjoy any sort of privileged status in their relationship with the State (…), the Court observes that it has never held in its case-law that the scope of the States' margin of appreciation (…) could be broader or narrower, depending on the nature of the religious beliefs (…). Therefore, the difference in the treatment of the applicant association compared to that of other religious associations in a similar situation could not be justified by the nature of its faith''. *See*, *ibid.*, paras. 144-145.

[235] *Ibid.*, para. 149.

Islam or not"[236] [unofficial translation]. They further stressed that the said registration "would create a schism within Muslim community and spread a form of Islam that was not in the tradition of Bulgaria"[237] [unofficial translation]. In other words, in order to avoid addressing a theological issue, to prevent a non-traditional form of Bulgarian religiosity from spreading into the country, to avoid causing a schism within an already existing religious community, domestic authorities refused the association's application for registration. Accordingly, for domestic authorities, the refusal aimed at safeguarding public order and the rights and freedoms of others as guaranteed in the second paragraph of article 9 of the Convention.

When addressing the case, the European Court of Human Rights started recalling that autonomy of religious communities and associations was indispensable for religious pluralism in a democratic society[238]. Absence of registration, in the Bulgarian context, amounts directly to preventing a religious community from fulfilling its *raison d'être* with relation to its members. Without it, a community is unable to have a legal personality, to possess goods and places of worship, bank accounts[239]… Therefore, the Court continues, if the aims pursued by the registration procedure could be found legitimate, applying such a procedure in such a strict way would amount to imposing one single recognized association per religion and lead domestic courts to assess themselves the—theological—differences separating distinct religious communities[240]. Such a situation is in breach of state obligations, which "must remain neutral and impartial"[241] [unofficial translation]. The Court recalls, as in almost every judgment, that the Convention requires states to ensure tolerance in between competing groups rather than to neutralize their opposition by eliminating pluralism[242].

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[236] *Metodiev and others v. Bulgaria*, para. 8.

[237] The original wording of these two quotations, drafted in French language, reads as follows: "si l'enregistrement sous le nom de 'Communauté musulmane Ahmadiyya' devait être accepté par les juridictions, cela entraînerait celles-ci dans un débat théologique sur la question de savoir si les ahmadis relevaient ou non de la religion musulmane. Elle considérait par ailleurs que l'enregistrement aurait pour conséquence de créer un schisme au sein de la communauté musulmane et de diffuser un islam non traditionnel pour la Bulgarie". *See*, *ibid*., para. 8.

[238] *Ibid.*, para. 33.

[239] *Ibid.*, para. 36.

[240] The Bulgarian system does not provide for any other procedure allowing religious communities to pursue and enjoy legal personality. *See*, *ibid.*, paras. 45-46.

[241] *Ibid.*, para. 46.

[242] *Ibid*.

As these examples show, the Court examined the issues at stake through the principles that states must adopt when facing religious communities: neutrality, tolerance, pluralism, objectivity. Principles that the Court adopts systematically in its assessment of recognition procedures[243], as well as the conformity to the Convention of the very privileges granted. In some cases, indeed, these privileges have amounted to discriminating against religious minorities[244].

As case-law indicates, Convention values govern state action. Given they are the basic values on which the whole Convention rests, they are the limits within which domestic state-Church relationships systems can exist[245]. At the same time, when said systems allow for a more in-depth judicial examination, values also govern state recognition and registration procedures. In other words, Convention values govern both the procedures state-Church relationships systems provide, and the very conceptual premises that structure the latter. They govern the external shape and the internal dynamics of domestic systems—their philosophical premises as well as their concrete procedures. Being so, values rationalize said systems into a more global, comprehensive framework, constituting the European model of state-Church relationships.

Lastly, these values deploy on every domain that said systems touch upon. They govern every dimension of state treatment of religious matters. Therefore, the Court uses these values when assessing any religious issue, any dimension of state-Church relationships brought before it. Depending on the case and its characteristics, the Court selects the suitable values and conducts its assessment accordingly.

C. Application—and adaptation—to distinct dimensions: As the Court explained in its jurisprudence, the values are the basic patterns of the framework underlying the Convention

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[243] The procedures are impugned only when they lead states to breach these values. Their concrete modalities appear to be irrelevant in themselves, they can be impugned only 'indirectly', when they breach stated values and principles. *See*, cases cited *supra*.

[244] ECtHR, Fourth Section, Decision, 18/09/2012, *Ásatrúarfélagid v. Iceland*, Application n° 22897/08; ECtHR, First Section, Judgment, 25/09/2012, *Jehovas Zeugen in Österreich v. Austria*, Application n° 27540/05.

[245] *See supra*, Section II (A).

as a whole—that is, its conceptual premises[246]. Being that so, they seem to form a global—comprehensive and consistent—set. In other words, for the fact that they form a consistent framework, these values form a finite system, they bear relations of interdependence and consistency with one another.

Yet, the Court's case-law does not provide for the whole set of values. Nor do the Court's basic documents lay it in its entirety[247]. Values the Court has been using in its case-law appear to be a construction of the latter, in an effort to better substantiate the content of the Convention. That is why, absent from its basic documents, they tend to appear gradually in its jurisprudence, according to the specific circumstances of each case. It is the content of the case at hand that determines whether—and which—values be resorted to.

In cases where secularism, as a system of regulating state-Church relationships, was the centre of litigation[248], the key element for the Court was the necessity for states to respect objectivity, to remain neutral, and hence ensure pluralism and equality of treatment between religions. according to the specific circumstances of each case. All the values quoted by the Court were governing the specific aspect raised before it, which was state's attitude towards religions. Therefore, when considering other aspects of society, it based its reasoning on other social values.

For example, such cases as *Dahlab v. Switzerland*, *Osmanoğlu et Kocabaş v. Switzerland*, *Lautsi v. Italy*, were an opportunity for the Court to state other values, specifically related to school and its environment. In *Dahlab v. Switzerland*, the Court upheld state restriction for a teacher to wear a headscarf for the latter was "difficult to reconcile (…) with the message of tolerance, respect for others and, above all, equality and non-discrimination that all teachers in

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[246] As the Court states, "any interpretation of the rights and freedoms guaranteed has to be consistent with 'the general spirit of the Convention, an instrument designed to maintain and promote the ideals and values of a democratic society'". *See*, *Soering v. The United Kingdom*, para. 87.

[247] Some values appear in the Preamble to the European Convention of Human Rights, but these values do not encompass those developed by the Court in its case-law. These values appear to be the Court's construction. However, the judgments do not show any methodology, nor do they lay any reasoning that yields in the Court's conclusion that these values rest the heart of the Convention. A state of fact that may claim for further research on the axiological content of the Convention and the Court's *modus operandi* in its application. *See* CHAIBI (M.), *L'Islam dans la jurisprudence de la Cour Européenne des droits de l'Homme*, pp. 53-57.

[248] *See supra*.

a democratic society must convey to their pupils"[249]. Completing these findings, *Osmanoğlu et Kocabaş v. Switzerland* gave the Court an opportunity to add that schools and collective lessons were an important factor for social integration into society. Consequently, it led to social integration being a legal limit for parents' right to see their children brought-up in respect of their religious beliefs[250]. And, to complement these two dimensions, *Lautsi v. Italy* and related cases allowed the Court to add that states were under the obligation to ensure that, whether of a religious nature or not, "information or knowledge (…) is conveyed in an objective, critical and pluralistic manner, enabling pupils to develop a critical mind particularly with regard to religion in a calm atmosphere free of any proselytism"[251]. Depending on the factual background of a case, and the considered dimensions of religious freedom, the Court resorts to specific values in order to give its ruling. In these cases relating to religious freedom in school, the different issues brought forth allowed it to precise the principles presiding over the school environment, and the corresponding limits of individual religious freedom. Doing so, the Court sketched a value framework for school premises—conceived as a micro society. In other words, it sketched the ideal social order, according to the Convention, for the school environment.

Whether regarding individual religious freedom or state-Church relationships, Court's developments on religion seem to spin around European social values. The latter form the Court's heuristic framework when interpreting the Convention, when elaborating on religious rights in all dimensions. That is, whether it interprets article 9, 11, article 2 of Protocol n° 1, or any other. European social values seem to form a matrix through which the Court approaches the cases, hence making its heuristic framework for case adjudication.

A chronological analysis of the Court's case-law, from the incipient beginnings of 1990s decade, shows a constant evolution towards more precision, more content and more

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[249] *Dahlab v. Switzerland*, p. 13.

[250] The parents were seeking dispense, for their children, from physical education classes. As school authorities refused to grant it, the parents argued a breach for their right to raise their children in conformity with their religious beliefs, as covers by Protocol 1-2. *See*, *Osmanoğlu et Kocabaş v. Switzerland*, para. 97.

[251] ECtHR, Grand Chamber, *Lautsi and Others v. Italy*, para. 62; ECtHR, Chamber, Judgment, 07/12/1976, *Kjeldsen, Busk Madsen and Pedersen v. Denmark*, Application n° 5095/71, 5920/72, 5926/72, para. 53; *Folgerø and Others v. Norway*, para. 84; ECtHR, Former Second Section, Judgment, 09/10/2007, *Hasan et Eylem Zengin v. Turkey*, Application n° 1448/04, para. 52.

substance. Constantly facing newer and more complex issues, its religious edifice has been constantly enriching, gaining substance and nuances. The Court's choice for confronting these issues seems to consist in laying Convention's actual, most basic content—its core values—and conduct the examination of cases parting from them. Such a way of proceeding participates to orienting domestic dynamics, in both social and institutional dimensions. On the one hand, as it has been discussed *supra*, it participates to shaping the social realm of domestic societies. On the other hand, it enhances states to develop a common institutional approach when it comes to interacting with religions. In both cases, European social values are the cornerstones of the process. They are, at the same time, a heuristic framework for the Court and legal principles for states to abide by. In this configuration, applying the Convention results in materializing a certain social order, as determined by said values. In other words, applying the Convention imparts European society, as made of Court's member-states, with a global social order.

IV. Pluralism as Oligopoly.

As mentioned *supra*[252], values, society and law may sound as distinct and independent concepts when they are, in fact, closely related and intertwined. As explained also[253], the latter is the conception that seems to emanate from the Court's judgments, in religious matters and beyond. Indeed, throughout the decades, the Court has regularly been affirming that Convention articles are values *per se*, unifying the behavior of its member states around behavioral constants endowed with a legal dimension[254]. With this double nature, values become more than principles to abide by: they become patterns of action unifying states into one global society that encompasses them all into one global socio-cultural entity (1) that comprises their specific diversity (2).

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[252] *See supra*, Introduction to Chapter 1.

[253] *Ibid.*

[254] *Ibid*.

1. From values to Axiology.

It has regularly been recalled, along the previous lines and pages, that the European Court of human Rights is a court of law. As such, its jurisdiction is finite. Said jurisdiction extends to 46 member states[255], grouping societies of quite different traditions, cultures and historical trajectories. That is, the Court's action takes place within spatial boundaries; the geography of the society composing its jurisdiction is limited, the area subject to its law and jurisprudential developments is definite.

Nevertheless, these boundaries still bear a level of diversity in terms of social features, History and traditions. So much so, when the Court examines a case, it is in view of all this social and historical diversity that it delivers its findings, *dicta*, and developments. And by adopting the approach described in the previous sections, it proceeds to rationalizing the social dynamics of the smaller societies embodied within its boundaries (A). In other words, its intent seems to be that of providing common principles and guidelines for state action, which unify states' internal dynamics. An action that materializes a global space of shared practices, socio-institutional patterns and meaning (B). In short, the Court's action participates to building a culture that unifies the societies under its jurisdiction (C).

A. Rationalizing the European Space: Values stated in the Court's judgements appear to be quite broad in terms of substance meaning. The Court itself does not provide, in its judgements, any definition thereof or any development likely to shed light on the latter. It only states they are the values underlying the Convention as a whole, constituting the ideals and hallmarks of a democratic society, and that they have been developed and shaped throughout History. Referring to religious pluralism precisely, in *Kokkinakis v. Greece* for example, it only stated it was indissociable from the idea of a democratic society, that it has been dearly won over the centuries, and that its existence depended on that of religious freedom[256]. It did not define what was intended by pluralism, nor did it set the latter's

[255] After the withdrawal of the Russian Federation on the 15th of March 2022.

[256] *Kokkinakis v. Greece*, para. 31.

boundaries. It did not lay any characteristic of the pluralism intended by the Convention's system, despite the nuances that pluralism as such beholds[257].

Furthermore, as a concept, 'values' are complex, multidimensional and, as a result, potentially equivocal constructs. In public discourse, for example, they refer to intangible principles governing a set of actions, approaches or endeavors. In the Law, they can be termed as general principles of Law. In sociology, they tend to be considered as abstract principles governing social dynamics and individual practices. In fact, a close scrutiny of the concept shows that values can be understood in three different ways. From one perspective, they may appear as components of a heuristic framework embraced by an intellect when reflecting upon an object. In this vein, they form-up the principles embraced by the person reflecting, when carrying its analytical activity[258]. From another perspective, they may be guiding principles for activities to be carried, results to be achieved, therefore constituting a set of abstract ideals that a certain endeavor intends to fulfil. Here, they become the ultimate goals of an action, or objective components of an ideal state of fact to be achieved. Eventually, they can also be described as a set of principles where elements of a complex structure naturally converge. That is, the elements ruling the integration of a complex system, thus materializing the systems's very existence. In this perspective, values can be considered as the elements by which a complex construct exists—or can be qualified as 'system'. Without these points of convergence, diverse elements would exist without ever coming together.

In the Court's jurisprudence, social values seem to fulfill the characteristics of all three perspectives. First, they compose the heuristic framework guiding the Court's analysis and assessment of cases. Indeed, the Court embraces these principles and seeks for states to implement them in their domestic realms. Second, they constitute the ideals and hallmarks of

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[257] According to religious market theory, pluralism can be at least of two types—a deregulated market or a regulated oligopoly. *See*, *inter alia*, YANG (F.), « The Red, Black, and Gray Markets of Religion in China », *The Sociological Quarterly*, 47 — 2006, pp. 93-122; GRIM (B. J.), *ed.*, FINKE (R.), *ed.*, *The Price of Freedom Denied. Religious Persecution and Conflict in the Twenty First Century*, New York, Cambridge University Press, 2011, 257 p; GIORDAN (G.), *ed.*, PACE (E.), *ed.*, *Religious Pluralism. Framing Religious Diversity in the Contemporary World*, Leiden, Brill, 2012, 203 p. The two configurations entail very distinct approaches of regulation.

[258] Something M. Koskenniemi termed as "mindset". *See*, KOSKENNIEMI (M.), « Constitutionalism as Mindset: Reflections on Kantian Themes About International Law and Globalization », *Theoretical Inquiries in Law*, Vol. 8, 2006, pp. 9-36.

a democratic society, as the Court states[259]. Therefore, they represent the ultimate objectives of Convention application, the components of the ideal state of fact sought by the latter's application. And, eventually, they are the principles unifying Convention's provisions into a complex unified system of rights.

From this perspective, Court's values serve as patterns of functioning for both the Court and its member-states, rather than specific legal requirements—in the traditional meaning of the term—to comply with. The Court, indeed, applies and interprets the Convention in light of said principles. Consequently, as components of its heuristics, any development of any provision contained in the Convention automatically conveys that Court findings be the fruit of said provision's development through said values. In more simple words, any development the Court makes becomes the furtherance of these values through the specific provision developed. Its entire jurisprudence comes to gravitate around them, rationalizing its action and endowing its findings, from one case to another, with further consistency.

Then, fortified with their legal dimension, values come also to infuse states' action. By way of the subsidiarity principle governing the relationships between the Court and domestic jurisdictions, states are the only responsible agents for implementing Court's findings within their domestic realm. Even more so, states under the duty to ensure said implementation be executed within its own jurisdiction. From states' perspective, Court's values do not form a regulatory program or a mandate to adopt any specific regulation. Rather, the Court seems to set Convention values as ultimate principles for states to concrete in their interactions with individuals and communities. It is even the more so as said values remain broad in terms of meaning, and allow a certain degree of liberty in terms of operationalization. States' reception of Court's developments and findings come to be structured by its values, which conditions their approach of issues to regulate. In other words, Court's values rationalize states' approach and regulations of social phenomena, leaving them with a margin of appreciation for determining which concrete regulations fit their particular context.

[259] *Leyla Şahin v. Turkey*, para. 108.

In matters of religious freedom, this rationalization takes place on three levels. First on the law governing interactions between state authorities and religious groups. That is, on the legal proceedings linking states and religious groups or individuals. Second, on the very content of individual religious freedom, which precludes the authorized behaviors and the ones to be prohibited. And third, on the visible landscape of society that these two latter sets of regulations foster. As has been seen in Section I of this chapter, religious freedom has a decisive impact on the visible sphere of society; its configuration conditions, to a certain extent, the behaviors taking place within it.

This double impact—on Court's jurisprudence and state action—participates to homogenizing state practices as well as, to a certain extent, the visible landscape of individual behaviors. Convention values acting as the converging principles thereof. In this perspective, Convention values serve as common patterns for behaviors—and institutional dynamics—freely and individually determined by states. They serve as a 'mindset'[260] in state developments, as patterns in their dynamics: as benchmarks of a common culture they ultimately form all together.

B. Developing a European Culture: Court's action, as described *supra*, fosters a common culture within its member-states. A common culture of regulation, of interactions with religions, with religious groups and individuals. At the same time, its jurisprudential developments of religious freedom, as an individual right, appears to preserve a certain order of a socio-cultural nature.

As a concept, the term 'culture' is quite polysemic. It has been endowed with various significations, throughout History. It has evolved constantly and may even have acquired nuances, with the time going, that might have changed or enlarged its primary meaning[261]. Originally designating the results of agricultural activity, the term seems to have progressively evolved to reach the immaterial dimension of human intellect. It came indeed to designate the

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[260] KOSKENNIEMI (M.), « Constitutionalism as Mindset… ».

[261] CUCHE (D.), *La Notion de Culture dans les Sciences Sociales*, Paris, La Découverte, 2010, 157 p. In this *opus*, the author focuses on the origin and evolution of the term 'culture', its use in social sciences along History, with a special focus on French, German and American traditions, and the interactions in between the latter.

activity of the human mind at a later stage—during Enlightenment—causing its equation with another term designating the same type of realities and dynamics albeit with a distinct rationale: the term 'civilization'[262]. Constant exchanges and travels between French and German philosophers of that time then endowed it with additional connotations and further nuances to finally encompass "also a number of characters which are proper to a community"[263] [unofficial translation].

In other words, it is at a later stage that the term came to designate the patterns linking individuals, in a way that allows them to be characterized as a group, a proper community, or even a People. It is only at a later stage that culture became "an organized system of interdependent elements [whose patterns of] organization matter more than its actual content"[264]. For what unites individuals, which are by nature diverse and different from each other, are the common principles they embrace altogether. For example, the principles they choose to abide by in their interactions. Principles which, considered from a larger and more encompassing perspective, appear to be the patterns of the holistic entity they form-up[265].

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[262] *Ibid*., pp. 10-12, 28-29.

[263] *Ibid.*, pp. 15-16. The original and complete citation, in French language, reads as follows: "'Culture' s'enrichit d'une dimension collective et ne se rapporte plus seulement au développement intellectuel de l'individu. Il désigne aussi désormais un ensemble de caractères propres à une communauté, mais dans un sens souvent large et flou. On trouve aussi bien des expressions comme 'culture française' (ou allemande) ou 'culture de l'humanité'. 'Culture' est très proche de 'civilisation' et parfois interchangeable avec lui''. The author contends that, at least in the French context, it is from there that social scientists tended to prefer the use of "the term civilization'' instead, when referring to the set of social phenomena embodying a people. *See*, *ibid.*, pp. 25-27.

[264] The original wording of the quotation, drafted in French language, reads as follows: "Avec les différents culturalismes, le concept de culture s'est considérablement enrichi. La culture n'apparaît plus comme un simple assemblage de traits dispersés, mais comme un ensemble organisé d'éléments interdépendants. Son organisation importe autant, sinon plus, que son contenu". *See ibid.*, p. 48.

[265] Communities, for example, can be very diverse. Depending on the pattern considered, one community can be split into several communities, several distinct communities may come to overlap with each other on several dimensions… The national community is composed of several socio-professional, intellectual, political or ideological sub-communities, each bearing and claiming conflicting sets of interests. At the same time, each of these sub-communities can share the same features as alike communities of other nations, and hence may be grouped into one single community altogether with the latter—despite the geographical dislocation. So were the Socialist Parties of the XXth century; so are European football clubs and communities; so are postmodern philosophers, as spread around the world as they may be. All share common features and characters which are proper to them. The most important of these characters are the ways of proceeding, ways of acting, managing and achieving their aims. In fact, the most important features are the very way that individuals or communities behave, the principles they adopt, the patterns of their behavior. That is, the intellectual patterns they manifest when behaving.

The mental patterns embraced collectively by a group of individuals seem indeed to be the core constituents of a culture. As Claude Lévi-Strauss explains, "[a]ny culture can be considered as a combination of symbolic systems headed by language, the matrimonial rules, the economic relations, art, science and religion. All the systems seek to express certain aspects of physical reality and social reality, and even more, to express the links that those two types of reality have with each other and those that occur among the symbolic systems themselves"[266]. In other words, the principles adopted by a set of individuals to regulate their relationships translates into a certain state of fact when applied in daily life. The mental patterns governing individual behavior materialize a physical visible reality of a social nature. That visible reality, that state of fact happens to be, following Claude Lévi-Strauss, the visible illustration of a culture. That visible reality becomes the result of the expression of the mental patterns adopted collectively—in form of language, economic ties, art, etc.—by individuals[267].

When setting values as the most basic elements of the European Convention on Human Rights, and further consecrating them as legal principles for states to apply, the Court intends that states abide by them. In the realm of religious freedom, stating that a behavior cannot benefit from Convention's protection when contradicting pluralism and tolerance entails that religious freedom only protects those behaviors which abide by such values. It entails that states, when regulating religious manifestations, can only grant protection for those behaviors which are structured by pluralism and tolerance in order for them to be in keeping with the Convention. In other words, when regulating, states have to adopt pluralism and tolerance as patterns for their action.

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[266] LEVI-STRAUSS (C.), *Introduction to the Work of Marcel Mauss*, London, Routledge & Kegan Paul, 1987, p. 16.

[267] Culture as mental patterns explains further how aspects of the social reality come to be qualified as culture *à part entière*. Artistic productions, writings, history, festivals, ways of socializing, gastronomy, latent meaning of words, conceptual approaches as such, ways of doing or considering the things of life are all labelled as 'culture' despite the features that distinguish them from one another—sometimes adamantly. According to Claude Lévi-Strauss, all these realities are produced by individuals, they are external emanations of the specific inner individual dynamics: ways of thinking, of approaching reality. Therefore, they come to be externalizations of these internal dynamics—the mental patterns—which form a culture when shared by a set of individuals. *See*, *inter alia*, CUCHE (D.), *La Notion de Culture dans les Sciences Sociales*, pp. 48-49.

As was explained in the previous sections, Convention values do not circumscribe to pluralism and tolerance only. They form a larger set making the heuristics of the Court when assessing cases. As a consequence, the visible reality they entail, when developed by states, reaches multiple areas of their domestic realms. When applied to state and Church relationships, they materialize proceedings, procedures, rules to follow, statuses granted to religious communities. When applied to individuals, they materialize the latter's condition in society, the stance adopted by states regarding religions, and a wider social order. In short, when integrating state action, values tend to materialize visible realities which are common to all states that share them. Following Claude Lévi-Strauss' words, they tend to materialize a common culture unifying member-states to the Convention.

As patterns of state action, values fulfill the same role as individual mental patterns fulfill regarding individual behavior. Hence they materialize a shared culture unifying member-states all together. In short, as proceeding this way, Court's action tends, *in fine*, to foster and preserve a certain culture within its member-states. A culture which appears in their juridic-institutional practices regarding religion, as much as in their sociological dimensions. Member-states come, thus, to form a society of common practices enhanced by European values, and share the meaning conveyed by those values.

C. Protecting a European Society: When interacting with one another, interacting agents tend to rely on implicit principles governing their interactions[268]. As explained, these principles, as mental patterns framing their actions towards each other, amount to a certain type of interactions, a certain type of language, of gestures, a certain type of meaning projecting a certain set of visible data that external observers name 'cultural traits'. The mental patterns underlying these visible traits constitute the social values that individuals embrace.

[268] OYSERMAN (D.), « Values, Psychological Perspectives », *International Encyclopedia of the Social & Behavioral Sciences*, Second Edition, 2015, p. 16151, *in fine*. 'Agents' refers, in this context, to any entity in interaction with another, whether they be individuals, organizations, states, etc.

Originally, values are psychological concepts. They describe how individuals perceive the world, the reality, and behave therein[269]. They are, therefore, individual elaborations. Once elaborated at the individual level and abided by in daily behavior, personal individual values direct and condition individual behavior. From there succeeds a series of interactions between individuals which ultimately settle those principles as patterns governing their mutual interactions—the values organizing their behavior towards each other. In other words, to the determination of values at the individual level follows a sort of negotiation at the collective level, through a multiplicity of interactions taking place in all orders, that ultimately settles the values which individuals come to follow in their interactions. This *de facto* negotiation yields in settling the values which serve as premises for interactions taking place at the larger level of society. The process drives values from their initial individual sphere to the social sphere; from the personal dimension to the social realm. Once they reach the social realm, values become the premises upon which social dynamics take place[270]. And, at the same time, they become the complex and multidimensional subject of study that social scientists have been grappling with along their history—particularly in sociology[271]. Therefore, when the European Court of Human Rights proceeds to consecrating social values as binding legal principles, it consecrates values emerging from European History and its dynamics.

Democracy and human rights[272], tolerance and pluralism[273], broad-mindedness and gender equality[274], integration through domestic traditions of social interactions[275]; all values

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[269] *Ibid*.

[270] More precisely, they become the premises upon which a Social Contract can be concluded between individuals, thus enabling a society to emerge. *See*, ONFRAY (M.), *Décadence*. *Vie et mort du judéo-christianisme*, Mayenne, Flammarion, 2017, p. 356.

[271] Studying values is a complex task for social sciences, given the complexity of the concept itself. Even defining what is to meant by 'social values' has proven to be a complex endeavor, where consensus has been missing from the origins to date. *See*, *inter alia*, HEINICH (N.), « La Sociologie à l'Épreuve des Valeurs », *Cahiers Internationaux de Sociologie,* 2006/2, n° 121, pp. 287-315; PERRY (R. B.), « The Definition of Value », *The Journal of Philosophy, Psychology and Scientific Methods*, Vol. 11, No. 6, 1914, pp. 141-162.

[272] *Refah Partisi v. Turkey*.

[273] *Dahlab v. Switzerland*.

[274] *Ibid*.

[275] *Osmanoğlu et Kocabaş v. Switzerland*, and *S.A.S. v. France* and its "sociability space".

embraced by the Court appear to be tainted by Europe's experience, major events, and historical encroachments with the major religions of the continent—Christian religions[276].

Thus, protecting values amounts to ensuring social dynamics follow the order said values tend to sketch. It is ensuring that social dynamics take place according to a definite set of patterns. In other words, it amounts to protecting a certain characteristics of society. That is how Court's axiological[277] interpretation of the Convention comes to have a direct impact thereon: it fosters a common culture within its jurisdiction, which unifies its member-states and orients their domestic social dynamics towards convergence.

From individual behavior to institutional dynamics, Court's jurisprudence in religious matters participates to enhancing a particular type of society within Europe. It provides the framework for social developments that it enshrines into the Law. Thanks to this legal status, values penetrate member-states' legal systems and ultimately spring out through their social dynamics, fostering a particular culture within their realms. In addition to making the heuristics of the Court, thus conditioning how the latter considers the realities presented to it, values also influence the determination of which behaviors may be entitled to Convention's

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[276] In their effort to producing and elaborating values, individuals tend to rely on a multiplicity of sources, often resorting to all sources of meaning within their reach. This intellectual stance entails two major consequences. First, it means values are in constant movement, subject to evolution, mutation, appearance and disappearance—they are dynamic historical constructs of individual minds. In this perspective, the values of a given society are the products of its historical dynamics, as crystallized at a particular time. Second, as one of the most powerful providers of meaning, religions play a key role in the determination of the latter—Religion is even considered to provide the framework underlying "the largest cultural groupings of people short of humanity as a whole". In other words, it is considered the primary material constituting cultures and civilizations. *See*, HUNTINGTON (S.), *The Clash of Civilizations and the Remaking of World Order*, New York, Simon & Schuster, 1996, p. 56. The dimensions of the living experience they consider, the subjects of their doctrines, individuals' attachment to them and the consequent power religions come to behold on individuals, their multidimensional impact on daily life; all these characteristics make of religions some of the primary sources of belief and meaning for individuals, even in contexts where they appear to be relegated to second spheres. *See*, *infra*, Part II, Chapter 1. Even more so, the ontological categories they behold seem to have integrated, along the centuries, the very intellectual frameworks of individual minds, shaping their interactions and behavior towards each other at the same time as underlying the latter with meaning. It may even be contended that their ontological categories integrated the very cognitive frameworks of individuals, ultimately providing the primary source of interaction with Reality for believers and non-believers alike. *See*, ONFRAY (M.), *Décadence*. *Vie et mort du judéo-christianisme*, Mayenne, Flammarion, 2017, 652 p. Therefore, social values can be described, in a large part, as the outcomes of the constant contacts taking place between religions and other social forces, through the mediation of individuals. In this vein, social values organizing the dynamics of a society at a given time become emanations of the religions which have animated said society during a more or less long period of time of its existence. They become secular emanations of those religions, as received, embraced or rejected by individuals composing society—believers and critics alike. Eventually, when integrated into positive Law as social values or general principles inspiring legislation, they become secular legal principles to follow indistinctly by every individual subject to the Law.

[277] BLANC-FILY (C.), *Les valeurs dans la jurisprudence de la Cour européenne des droits de l'Homme : Essai critique sur l'interprétation axiologique du juge européen*, Bruxelles, Bruylant, 1ère éd., 05/2016, 756 p.

protection, which may be legitimately forbidden by states and which be admissible for the Court to asses—that is, which may be relevant for Convention's application. In that, they delimit the scope of Convention articles, and the latter's application to the facts at hand. More precisely, they delimit the contours of what would be socially accepted according to the Court, in the religious realm of European society. They delineate an oligopolistic system of socially acceptable individual behavior and legally acceptable institutional proceedings for interacting with religions. They delimit the contours of the Court's pluralistic approach—the contours of pluralism as intended by the latter.

2. From Society to Oligopoly: European Pluralism and its limits.

As it has been discussed in the previous Sections, values are keystones of Court's judgements on religious matters. The latter's axiological interpretation of the Convention confers to European social values, conceived as the bases of the Convention, a decisive impact.

This impact appears specifically in two factors. On the on hand, constituting the Court's heuristics, values tend to lead the Court to conceive similar facts differently, which, in turn, results in similar cases finding different outcomes (A). On the other hand, they seem to pave the way to particular hermeneutics which maintain determinate religious behaviors out of the scope of article 9. That is, despite their religious nature, some behaviors examined by the Court have proven to fall outside the scope of article 9 due to the fact that they do not fulfill Convention values (B). The basic result of this situation is a delineation of the acceptable religious behavior according to the Convention—that is, the acceptable religious behavior within European boundaries. In other words, the Court's axiological interpretation of the Convention draws the limits of the acceptable diversity within European society, as formed of member-states to the Convention. It sketches the characteristics of pluralism, as conceived by the Court, which bears the traits of an oligopoly, with European values as discriminants.

A. Similar Facts yet distinct Realities: Along the years, school environment has brought several cases to the attention of the Court. In fact, it even seems to be one of the major sources for Court's religious jurisprudence. It presented the Court with key issues for religious

freedom developments, from the narrow individual viewpoint as much as for larger social considerations.

In the previously discussed *Dahlab v. Switzerland*, for example, the issue at the heart of the case was the possibility for a public school teacher to wear an islamic headscarf, in execution of her individual religious freedom. When elaborating upon the case, the Court upheld state restriction thereof insofar as the 'the wearing of a headscarf might have some kind of proselytising effect, seeing that it appears to be imposed on women by a precept which is laid down in the Koran and which (…) is hard to square with the principle of gender equality'[278]. In other words, the Court was assessing this religious manifestation—the headscarf—from the point of view of those who were exposed to it—the pupils. Given the headscarf's effects on the latter, the Court found legitimate for Swiss authorities to forbid its wearing.

In a similar case, *Lautsi v. Italy*[279], the Court was facing a religious object attached on classroom walls. The applicants, in this case, were the pupils' parents. They considered the object to have the same kind of impact on their children as Mrs Dahlab's religious garment[280]. For that being so, they were claiming respect of their right to ensure that their children's "education and teaching [are] in conformity with their own religious and philosophical convictions"[281]. In other words, parents were arguing that the presence of a crucifix inside classrooms contradicted their right as enshrined in Conventions Protocol I, article 2. Therefore, the Court was in the same position as in *Dahlab v. Switzerland*: it had to determine the impact of the religious object on the pupils.

When dwelling on the issue, the Court declared there was "no evidence before [it] that the display of a religious symbol on classroom walls may have an influence on pupils"[282]. Unlike the teacher' religious garment in the Swiss case, the crucifix was not proven, according to the

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[278] *Dahlab v. Switzerland*, p. 13.

[279] ECtHR, Grand Chamber, Judgment, 18/03/2011, *Lautsi and Others v. Italy*, Application n° 30814/06.

[280] *Ibid*., paras. 30-31.

[281] European Convention on Human Rights, Protocol I, article 2.

[282] *Lautsi and Others v. Italy*, para. 66.

Court, to have any impact on pupils. It considered any such impact to be "the applicant's subjective perception"[283]. That is, the subjective perception of external observers—the parents. Furthermore, the Court stressed the "essentially passive [nature of the] symbol"[284], recalling that, within school environment and teachings, the "didactic speech or participation in religious activities"[285] were paramount to any other consideration.

On the facts, these two cases share key elements. They both concern religious symbols inside classroom premises, both exposed to pupils. Their impact on pupils, especially given the young age of the latter, was the determinant factor. And teaching practices were the paramount criterion for assessing the nature of their impact. Yet, despite these similarities, the cases received distinct outcomes: the Swiss teacher's covering was deemed eloquent *per se*, regardless of the teacher's discourse and teaching practices[286], whereas the Italian crucifix was considered essentially passive. In the first case, Court's concern were the values stemming from the religious garment; in the second, values were not discussed[287]. In the Swiss case, the Court made its own elaborations on the religious object, when it left any such consideration, in the second case, for the defending government to settle internally. The first case was examined through Convention values; in the second, values did not intervene. Such a difference of assessment tends to indicate that the Court considers case facts through the prism of those European values that form its heuristic matrix. Whenever factual realities fulfill said values, the Court proceeds to examine the case further; by contrast, when they express other values, it tends to deny them Convention's protection for being outside the latter's scope[288].

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[283] *Ibid*. The Court continues stating: "so it cannot reasonably be asserted that it does or does not have an effect on young persons whose convictions are still in the process of being formed".

[284] *Ibid*., para. 72.

[285] *Ibid*.

[286] The Court recalled that her behavior as a teacher was not questioned, neither by authorities, nor by parents themselves. *See*, *Dahlab v. Switzerland*, p. 1.

[287] Even when the defending government stated the symbol was linked to Italian identity, arguing it "symbolised the principles and values which formed the foundation of democracy and western civilisation", the Court did not respond. Rather, it chose to leave these considerations to the national margin of appreciation. *See*, *Lautsi v. Italy*, paras. 76-70.

[288] CHAIBI (M.), *L'Islam dans la jurisprudence de la Cour Européenne des droits de l'Homme*, pp. 46-63.

Following the same rationale, when confronting use of a Ayahuasca for religious purposes[289], the Court ignored applicant's comparison with the ritual use of wine in other religious denominations[290]. It did not dwell on the comparison, nor did it consider the substances themselves, their characteristics, or the regulations followed for their ritual use. It did not consider the concrete effects they would cause their users. In fact, it considered the comparison simply irrelevant[291], suggesting no parallel could be made in between wine, a mainstream beverage, and the exotic substance used by the applicants.

Eventually, discrepancy of values in between religions and religious movements appear to have caused a shift in principles governing the regulation of the latter. In founding *Manoussakis v. Greece* judgement[292], the Court found "the right to freedom of religion as guaranteed under the Convention excludes any discretion on the part of the State to determine whether religious beliefs or the means used to express such beliefs are legitimate"[293]. In other words, any judgment of a value nature conducted upon religions, religious practices and manifestations, would breach the right to freedom of religion. Nevertheless, the Court relied on similar kinds of value assessments in judgements involving certain manifestations of Islam[294], found in keeping with the Convention that states conduct such assessments on new religious movements, in their effort to inform citizens about the latter[295]…

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289 *Alida Maria Fränklin-Beentjes and Ceflu-Luz Da Floresta v. the Netherlands*, para. 5.

290 *Ibid.*, paras. 32, 52. Also, for the domestic Court's findings, paras. 44, and 23-24.

291 *Ibid.*, para. 52, 54. Precisely, paragraph 54 of the decision reads: "the rites referred to differ significantly from those practised by the applicants, most notably – for present purposes – in that participants neither intend nor expect to partake of psychoactive substances to the point of intoxication. The applicants are therefore not in a position relevantly similar to that of the churches with which they compare themselves". Therefore, the Court did not delve into the arguments raised.

292 ECtHR, Chamber, Judgment, 29/09/1996, *Manoussakis and Others v. Greece*, Application n° 18748/91.

293 *Ibid*., para. 47.

294 *See*, especially, Judge Kovler's separate opinions in *Refah Partisi v. Turkey*, p. 50, and in ECtHR, Grand Chamber, Judgment, 02/11/2010, *Şerife Yigit v. Turkey*, Application n° 3976/05, p. 28. Also, *see* the cases discussed in the preceding sections, along with those quoted in corresponding footnotes. This value judgment encompasses the religious manifestations as such, as much as incorporation of islamic principles into state positive law. In the latter case, following Judge Kovler's words, the Court relies on value judgments made upon islam as whole. *See Refah Partisi v. Turkey*; *Molla Sali v. Greece.* Also, *in fine*, PERONI (L.), « Religion and culture in the discourse of the European Court of Human Rights: the risks of stereotyping and naturalising », *International Journal of Law in Context*, 10(2), 2014, pp. 195–221.

295 ECtHR, Fifth Section, Judgment, 06/11/2008, *Leela Förderkreis E.V. and Others v. Allemagne*, Application n° 58911/00.

As Court's case-law indicates, values are paramount for Convention's application. They determine Court's particular hermeneutics when adjudicating. Therefore, not only do they appear to be the benchmarks of Convention's respect, but also the determinants of its very application to the facts at hand. That is, they delimit the scope of application of the latter.

B. Delimiting Convention's Scope: Limiting Convention's protection to those realities inspired by Convention values amounts to limiting the latter's scope of application. It entails that a religious manifestation which does not fulfill said values, does not benefit from its protection either. In other words, behaviors generally considered as religious manifestations do not benefit from Convention's protection if they fall outside its value framework.

For instance, that is what happened in *Dahlab v. Switzerland* and alike cases[296]. Likewise, the Court found inadmissible, under article 9, applicants' refusal to sell contraceptive products due to their religious beliefs[297]. It found protecting the corporate image of a company by restricting religious rights of its personnel contrary to article 9[298]. It found expression of religious beliefs could be lawfully restricted when it lead agents to refuse to execute their mission—even when said mission was not originally stated in their employment contract, being a later addendum[299]. Eventually, even when state regulations providing individuals with treatments based on their religious affiliation contradicted Convention values, the Court concluded said regulations were in breach of the Convention. That is, when religious principles contradicting Convention values appear to be incorporated into state Law, the Court found the legal provisions thus incorporating them to be in breach of the Convention itself[300].

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[296] *Ebrahimian v. France*; *Şefika Köse and 93 Others v. Turkey*; *Dogru v. France*; *Refah Partisi (Welfare Party) v. Turkey*; *Molla Sali v. Greece*; *Alida Maria Fränklin-Beentjes and Ceflu-Luz Da Floresta v. the Netherlands*; etc.

[297] ECtHR, Third Section, Decision, 02/10/2001, *Bruno PICHON et Marie-Line SAJOUS v. France*, Application n° 49853/99.

[298] ECtHR, Fourth Section, Judgment, 15/01/2013, *Eweida and Others v. United Kingdom*, Application n° 48420/10, 59842/10, 51671/10 et 36516/10, paras. 94-95. In this judgment, the condition of LGBTQI+ people impacted by the claims made the third and fourth applicants—in an effort to seek respect their religious conceptions—outweighed the religious rights of the applicant. *See*, *Eweida and Others v. United Kingdom*, paras. 106-109.

[299] *Ibid.*, paras. 106-109.

[300] *See*, *Refah Partisi (Welfare Party) v. Turkey*; *Molla Sali v. Greece.*

Despite their religious nature, manifestations contradicting the Convention's value framework fail to benefit from the latter's protection. When adjudicating upon them, the Court tends to reject applicant's claims through inadmissibility decisions, or upholds their restriction by state authorities. As a result, the Court's axiological interpretation of the Convention tends to delineate the acceptable religious behavior to take place within its jurisdiction. It tends to draw the limits of the acceptable religious diversity within European society.

Therefore, when it comes to individual behavior, the Court's final findings, and their incorporation into domestic state-law, result in shaping the landscape of domestic societies according to what European values require. When it comes to institutional arrangements based on religious approaches, or religious principles, the Court finds the regulations embodying them in breach of Convention's articles when they do not correspond to the value framework of the Convention. When it comes to institutional dynamics of interaction with religions, the Court only upholds the latter when they materialize Convention values—when they be in keeping, even on the conceptual level, with its value framework. On all three dimensions, Court's findings appear to be injunctions made for states to regulate according to the value framework of the Convention. That is, supported by its hierarchical primacy over domestic courts, the Court's judgments become a mandate for states to accept only those manifestations, behaviors or regulations, that bear European values as core premises. As Judge Tulkens explains, "[t]he Court constructs freedom of religion (also in its collective or/ and institutional aspect) upon the whole system of values established by the Convention"[301].

Thus, the Court's axiological interpretation shows a particular apprehension of religious diversity. The Court's jurisprudence seems to lay its ontological constitutive elements, which spark as conditions of admission for religious manifestations to take place. Hence along the Court's judgements appears a particular conception of pluralism, which encompasses the

[301] TULKENS (F.), « The European Convention on Human Rights and Church-State Relations. Pluralism vs. Pluralism », *Stato, Chiese e pluralismo confessionale*, 2011:28, para. 9. The salient illustration of this approach may be the Court's regulation of individual religious manifestations based on Islam: the number of judgements and key issues brought froth in cases involving this religion tend to show, *expressis verbis*, the Court's reluctance to grant Convention's protection to any reality it deems to contradict the Conventions' conceptual premises—that is, its value framework. *See*, CHAIBI (M.), *L'Islam dans la jurisprudence de la Cour Européenne des droits de l'Homme*; BRUBAKER (R.), « A new 'Christianist' Secularism in Europe » (Last accessed: 21/11/2021). In the same vein, *see*, FERRARI (S.), « Law and Religion in a Secular World: A European Perspective », *Ecclesiastical Law Journal*, 14, 2014, pp. 363-367.

religious diversity contained within European values exclusively. Indeed, the dynamics of pluralism that appear from the Court's jurisprudence seem to be those of an oligopoly[302], with European values as dynamic discriminants. As F. Yang argues, in a "religious oligopoly, the state allows more than one religion to operate legally, but some religions are banned or subject to repression"[303]. From the Court's perspective, religions appear to be free to operate; their manifestations, however, can be subject to prohibition when they contradict the Court's settled value framework.

In fact, this seems to be the reason of a differentiated treatment that appears to structure the Court's jurisprudence in relation to religious manifestations. Scholars specializing in the study of Convention's article 9, such as Carolyn Evans, often argue that the Court is more lenient towards Christian religions and their manifestations[304]. It is arguable that the reason for which the Court appears to be more lenient towards these religions and their manifestations is the correspondence in between the latter and the Convention on the axiological level. To put it otherwise, Christian religions have had a substantial role in shaping European society across the centuries[305]. The constant interactions between Christian religions and lay forces, across the centuries, have animated the history of Europe as a society to its heart. In this perspective, Christian religions were a decisive factor in the advent of Europe as it exists today; the values Christian religions convey have, at least partly, integrated the constituent features of Europe as a society. Therefore, Christian religions and their manifestations may tend to fulfill Convention values—the values of Europe—more consistently than those of other religions,

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302 YANG (F.), « Oligopoly Dynamics: Consequences of Religious Regulation », *Social Compass*, 57(2), 2010, pp. 201-203.

303 *Ibid*., p. 199.

304 KAYAOGLU (T.), « Trying Islam: Muslims before the European Court of Human Rights », *Journal of Muslim Minority Affairs*, Vol. 34, No. 4, 2014, p. 349.

305 As highlighted by various authors, religions and other sites of ideas relating to 'meaning' and 'imaginary' have a strong impact on societies and their constituent cultures. For example, early anthropologist B. Malinowski argues that "Magic and, to a much higher degree, religion are the indispensable moral forces in every human culture. Grown out as they are of the necessity to remove internal conflict in the individual and to organize the community, they become the essential factors of spiritual and social integration. They deal with problems which affect all members of the community alike. They lead to actions on which depends the welfare of one and all. Religion and, to a lesser extent, magic thus become the very foundations of culture". *See*, MALINOWSKI (B.), « Culture as a Determinant of Behavior », *The Scientific Monthly*, Vol. 43, No. 5, 1936, p. 448.

hence being more often in line with the Convention, which yields in the differentiated treatment put forward by the authorized scholars[306].

As case-law demonstrates, the axiological interpretation adopted by the Court has profound consequences on religious freedom. It impacts both its dimensions—the individual right to religious freedom and the institutional settings of Church and state relationships. Adopting this approach, the Court tends to protect a certain idea of Europe as a society. Therefore, in addition to being axiological, the Court's approach can be described as holistic, centered on society, *ad valorem*, seeking to materialize a social order in which various religious manifestations can take place. In that, the Court's interpretation contrasts on three aspects at least with the one followed by its Inter-American counterpart—the Inter-American Court of Human Rights.

[306] *See*, for example, KAYAOGLU (T.), « Trying Islam: Muslims before the European Court of Human Rights », pp. 349-350, 352, 356-357; EDMUNDS (J.), « The limits of post-national citizenship: European Muslims, human rights and the *hijab* », *Ethnic and Racial Studies*, 35:7, 2012, p. 1192. Following this approach, despite bearing European values as core discriminants, the oligopoly stemming from the Court's jurisprudence takes the traits of a Christian-secular oligopoly, excluding every behavior not fulfilling the values making its bases.

Chapter 2. The Inter-American Court of Human Rights: a pragmatic approach[307].

The European Court of Human Rights and the Inter-American Court of Human Rights (IACHR) share common essential features. Both are human rights treaty bodies; they are both judicial organs with the power to adjudicate upon state or individual applications on the international level. Also, after adjudication, their judgments settle the law by which their member-states must abide. In addition, due to their international nature, they face similar constraints related to state sovereignty and the extent of the subsidiarity principle. Nevertheless, these similarities do not preclude from major distinctive features. The Courts differ on key dimensions, especially when it comes to applying their basic documents.

The IACHR is one of the main human rights organs of the Organization of American States (OAS/the Organization). The organization was founded in 1948, upon signature of its basic Charter in Bogotá (Colombia) by 21 states from North, Central, and South America[308]. Similarly to its European counterpart, the Council of Europe, the Organization put in place several organs, committees and councils in charge of a variety of subjects facilitating inter-states relations and cooperation. Just as was the case with its European counterpart, one of these subjects was human rights.

For that specific purpose, the Organization facilitated the adoption of an American Convention on Human Rights (ACHR/American Convention). Members of the Organization met for a special conference in November 1969—the Specialized Inter-American Conference

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[307] This chapter was published as an independent article under the title of CHAIBI (M.), « Religion and Pluralism before the Inter-American Court of Human Rights: From Individualizing Religious Freedom to Deregulating the Religious Market », *Oxford Journal of Law and Religion*, Volume 11, Issue 2-3, 2022, pp. 246-262. Minor changes might appear between the chapter and the article due to the fact that the publication required minor changes and adjustments to publication standards.

[308] Namely, the founding states were: Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, United States of America, Uruguay, and The Bolivarian Republic of Venezuela. In the following years, they were joined by 14 other states from the Inter-American area, namely: Barbados at the same time as Trinidad and Tobago (1967), Jamaica (1969), Grenada (1975), Suriname (1977), Dominica (Commonwealth of) at the same time as Saint Lucia (1979), Antigua and Barbuda at the same time as Saint Vincent and the Grenadines (1981), The Bahamas (Commonwealth of) (1982), St. Kitts & Nevis (1984), Canada (1990), Belize and Guyana (1991). More information on accession of each state on the Organization of American States' official webpage: https://www.oas.org/en/about/member_states.asp (last accessed: 17th of July, 2022).

on Human Rights—, during which the American Convention was drafted and adopted[309]. Since the Specialized Conference took place in Costa Rica's capital city—San José de Costa Rica—, the Convention was named as The Pact of San José. It entered into force on 18 June 1978, following reception of the 25th ratification instrument[310].

As a legally binding treaty, the American Convention provided for two protection bodies in charge of controlling its application by states. The first body was the Inter-American Commission of Human Rights (the Commission), which, initially created by the OAS in 1959, continued to proceed as a protecting body for the American Convention as mentioned in article 33 of the latter[311]. The second body, formally created by the same body, was the Inter-American Court of Human Rights. The Inter-American Court commenced its activity in 1979 after the American Convention entered into force. Both organs, since the origins, were composed of 7 members, elected among nationals of the OAS's member-states[312].

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[309] *See* the presentation given by the IACHR's Secretariat on its official web page: https://www.corteidh.or.cr/historia.cfm (last accessed on 17 July 2022). It was only then that the Inter-American system, and the Organization of American States, came to count with a legally binding human rights treaty. Before that, the main human rights document was the American Declaration of Rights and Duties of Man, which, as a declaration adopted at the same time as the Charter of the Organization of American States without any legal dimension.

[310] The 25 member-states to the Convention were thus: Argentina, Barbados, Bolivia, Brazil, Colombia, Costa Rica, Chile, Dominica, Ecuador, El Salvador, Granada, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Dominican Republic, Suriname, Trinidad and Tobago, Uruguay and Venezuela. *See*, *ibid.*

[311] Indeed, the Commission preceded the Inter-American Court and the American Convention. As R. K. Goldman argues, when the Council of the AOS approved the statute of the Inter-American Commission in May-June 1960, it stated the latter was "'an autonomous entity' of the OAS whose function is to promote respect for human rights as set forth in the Declaration of the Rights and Duties of Man. The Commission was assigned the following functions and powers in Article 9 of its Statute:
(a) To develop an awareness of human rights among the peoples of America;
(b) To make recommendations to the governments of the member states general, if it considers such action advisable, for the adoption of progressive measures in favor of human rights within the framework of their domestic legislation and, in accordance with their constitutional precepts, appropriate measures to further the faithful observance of those rights;
(c) To prepare such studies or reports as it considers advisable in the performance of its duties;
(d) To urge the governments of the member states to supply it with information on the measures of human rights;
(e) To serve the O.A.S. as an advisory body in respect of human rights".
See, GOLDMAN (R. K.), « History and Action: The Inter-American Human Rights System and the Role of the Inter-American Commission on Human Rights », *Human Rights Quarterly*, 31(4), 2009, p. 862.

[312] Article 2 of the Statute of the Inter-American Commission of Human Rights; article 4 of the Statute of the Inter-American Court of Human Rights. According to their professional characteristics, elected members of each organ tend to belong to a definite profile: the Commission's members seem to be legal professionals, such as practicing lawyers and attorneys, whereas the Inter-American Court's judges seem rather to be academics.

This configuration already highlights key distinctions differentiating the European and Inter-American human rights systems. The two systems share a similar architecture, as they both integrate the global ecosystem of an international organization. They are, thus, also subject to the same dynamics and logics of interaction between sovereign states, which can amount to impacting their functioning. But despite these similarities relating to the global institutional context in which they appear to be integrated, the two systems vary in the approach taken to the fulfillment of their mission. On the one hand, the Inter-American system mainly rests on two distinct organs, a court and a commission, when its European counterpart operates with only one—the Court—since Protocol n° 11 entered into force in 1998[313]. That is, human rights guarantees, in the Inter-American system, are protected by two organs of a different nature, whereas, in the European system, they are only protected by one judicial organ. On the other hand, the European Court is composed of several chambers—the Chamber and the Grand Chamber which can re-adjudicate upon cases of a special importance to its jurisprudence—, whereas the American Court is only composed of one.

This distinctiveness in the organic configuration of the two systems entails differences in the nature of control ensuring the conventions' respect. In the European context, the control is of a judicial nature exclusively. In the Inter-American context, however, a quasi-judicial control completes, and precedes, the judicial control.

Indeed, the Commission's mandate is of a double nature. Its original mandate, as set by the OAS, was to document the human rights situation in the region, by drafting and publishing reports thereon[314]. The entry into force of the American Convention, and the commencement of the Inter-American Court's activity in 1979, enriched the Commission's mandate with further prerogatives. It was then to examine individual applications, whether originating from states, individuals, groups of individuals and non-governmental organizations legally

[313] Protocol n° 11 was adopted in 1994, and entered into force on 1 November 1998. Before that, the European system also counted with a Commission, which shared a similar mandate with the Inter-American Commission. The two systems were thus nearly identical before European states chose to operate with a court only.

[314] GOLDMAN (R. K.), « History and Action… », p. 873; MEDINA (C.), « The Inter-American Commission of Human Rights and the Inter-American Court of Human Rights: Reflections on a Joint Venture », *Human Rights Quarterly*, vol. 12, n° 4, pp. 439-443.

recognized by OAS member-states. Once its assessment of these applications complete, the Commission can then submit them to the Inter-American Court for judicial examination.

In other words, the Commission's mandate is to examine the admissibility of a case, to carry any further investigation that a case warrants, and eventually endeavor "a friendly settlement on the matter"[315]. Accordingly, the cases brought to the IACHR can have two origins: either state-parties to the American Convention—who recognized, and are thus subject to, the jurisdiction of the Court—bringing complaints against other state-parties, or the Commission itself when it finds an application admissible[316].

This configuration endows the Inter-American Commission of Human Rights with a pivotal role for the development of human rights within the inter-American system. It confers large prerogatives to the Commission for achieving human rights within state-parties to the American Convention, thus leaving the Inter-American Court with the precise mission of setting the applicable law of human rights in the region. The IACHR is, indeed, the organ of the OAS in charge of controlling states' compliance with the American Convention, which it carries through case-law or advisory opinions. In other words, the Inter-American Court is the organ of the law, whereas the Commission remains a quasi-judicial body with various prerogatives of an investigating and diplomatic nature.

As their respective roles within the Inter-American system indicate, the two organs are complementary. In other words, they share a mission, a common ultimate goal, which is achieving human rights within their jurisdiction. In order to fulfill it, however, each organ has a different way of proceeding. The Commission's role seems to be that of driving states to respecting the American Convention through close continuous contacts, discussions with state authorities and individual applicants in an effort to achieving friendly settlement, or through documenting violations and recommending measures to state-parties[317]. Contrasting with this

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315 MEDINA (C.), « The Inter-American Commission of Human Rights and the Inter-American Court of Human Rights… », pp. 445-446.

316 *Ibid*., p. 446-447.

317 *See*, for example, MARTINÓN QUINTERO (R.), « El derecho a la libertad religiosa en los sistemas regionales de protección de derechos humanos de Europa y América », *Revista Iberoamericana de Filosofía, Política, Humanidades y Relaciones Internacionales*, Año 23, n° 46, 2021, pp. 604-607.

soft approach, the Inter-American Court dwells on adjudication, on the law and the legal treatment of cases. The Inter-American Court remains the organ in charge of producing the law: it is the organ which settles the content of the rights guaranteed by the American Convention.

In the American Convention, the right to freedom or religion and belief is enshrined in article 12. The latter states: "1. Everyone has the right to freedom of conscience and of religion. This right includes freedom to maintain or to change one's religion or beliefs, and freedom to profess or disseminate one's religion or beliefs, either individually or together with others, in public or in private; 2. No one shall be subject to restrictions that might impair his freedom to maintain or to change his religion or beliefs; 3. Freedom to manifest one's religion and beliefs may be subject only to the limitations prescribed by law that are necessary to protect public safety, order, health, or morals, or the rights or freedoms of others; 4. Parents or guardians, as the case may be, have the right to provide for the religious and moral education of their children or wards that is in accord with their own convictions".

Unlike its European counterpart[318], the Inter-American Court issued only a few judgments and advisory opinions relating to religious freedom[319]. In fact, it did not issue any judgment on an alleged breach of article 12 of the American Convention. It did not, accordingly, address religious freedom directly[320]. The only direct elaboration on article 12 that the Court seems to

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318 According to Hudoc database, which references the Court's documents exhaustively, the Court examined 718 cases involving article 9 and article 2 of Protocol n° 1. This research was carried on the 18 July 2022, using the tools provided by the Hudoc database. In order for all Court's documents to appear, the sections corresponding to Chamber and Grand Chamber judgments were selected, in addition to the sections corresponding to Commission, Chamber and Grand Chamber decisions. All the documents obtained were then filtered using 'art. 9' and 'English'. As of 18 July 2022, the database showed 718 decisions and judgments relating to religious freedom in all its dimensions.

319 MARTINÓN QUINTERO (R.), « El derecho a la libertad religiosa… », p. 609; MOSQUERA (S.), « Reflexiones a partir del estudio de casos sobre libertad religiosa en el sistema interamericano de protección de los derechos humanos », *Persona y Derecho*, vol. 77, 2, 2017, pp. 335-336. Content relating to religious freedom, as a right, can be found in the Inter-American Commission's reports. But, as the two authors argue, for the very nature of the Commission's work, these reports can hardly serve to sort the legal regime governing religious freedom as provided for in the American system of human rights. Until the 18th of July 2022, the IACHR had delivered a total of 29 advisory opinions and 449 judgements and decisions.

320 MOSQUERA (S.), « Reflexiones a partir del estudio de casos… », p. 344. In the American system of human rights, the right to freedom of religion and belief is protected by article 12 of the American Convention on Human Rights. This provision has two main differences with ECtHR's article 9. First, it incorporates parents' right for their children's education to be in accordance with their own religious convictions, which has been added to the ECtHR by Protocol n° 1. But it does not enshrine any right to conscientious objection. *See*, MARTINÓN QUINTERO (R.), « El derecho a la libertad religiosa… », pp. 603-606.

have exposed lies in its Advisory Opinion on *Differentiated approaches with respect to certain groups of persons in detention*[321]. In the said Advisory Opinion, it held indeed that the right to freedom of conscience and belief is one of the bases of the democratic society[322]. The right thus allows for individuals to conserve, change, profess and divulge their religion or their beliefs[323]. In its religious dimension, the Court pursued, "it constitutes a transcendental element in the protection of the believers' convictions and in their way of life"[324]. Besides these statements, the Court hardly made any finding relating directly to religious freedom, as it had to rule over claims which only had an incidental impact on it.

Nevertheless, albeit touching upon religious freedom indirectly, the IACHR made statement that showed how it considered religious freedom, and how it conceived the guarantees the latter entails according to the American Convention. Despite the cases it had to examine did not bring forth religious freedom or article 12 as such, they were key for exposing the Inter-American Court's approach to religion, religious freedom, religious diversity and—*in fine*—the American Convention at large. They revealed that the Court integrates religion into the global set of characteristics making a 'human person'.

Therefore, when delving into the IACHR's jurisprudence, two elements spark the eye immediately. First, the scarcity of religious cases presented to it (I). As exposed in the previous lines, the Court did not often make any findings on religion or religious manifestations as such. Nevertheless, the IACHR's global approach to the American Convention reveals how it considers religion and religious freedom. That is, its global interpretation of its basic document allowed to it to make key statements on religion and religious freedom with regards to the American Convention (II). This is the second observable

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321 IACHR. Differentiated approaches with respect to certain groups of persons in detention (Interpretation and scope of Articles 1(1), 4(1), 5, 11(2), 12, 13, 17(1), 19, 24 and 26 of the American Convention on Human Rights and other human rights instruments). Advisory Opinion OC-29/22 of May 30, 2022. Series A No 29.

322 *Ibid.*, para. 306.

323 *Ibid*.

324 *Ibid*. The entire original dictum, available exclusively in Spanish as of the 27th of October 2022, reads as follows: "El derecho a la libertad de conciencia y religión, contemplado en el artículo 12 de la Convención Americana, permite que las personas conserven cambien, profesen y divulguen su religión o sus creencias. Este derecho es uno de los cimientos de la sociedad democrática. En su dimensión religiosa, constituye un elemento trascendental en la protección de las convicciones de los creyentes y en su forma de vida".

element: the Inter-American Court's mode of interpreting the American Convention lead it to lay its conceptions on religion even in cases based on other rights than the right to freedom of religion and belief. In these cases, the Inter-American Court stated the premises on which religious freedom lies, in the Inter-American context, and exposed the latter's inner objective. Following, its interpretation of religious freedom, projected on the social level, tends to materialize a specific type of pluralism that contrasts on various dimensions with that of the European Court of Human Rights (III).

I. Religion before the IACHR.

Considering its wording and the distinct dimensions the provision covers, article 12 of the American Convention is very similar to article 9 of the European Convention on Human Rights and article 18 of the International Covenant on Civil and Political Rights. In fact, article 12 of the American Convention is even more complete as a system in that, unlike ECHR's article 9, it conceives the right of "parents (…) to provide for the religious and moral education of their children (…) in accord with their own convictions" as part and parcel of the right to freedom of religion and belief[325].

However, despite its multiple dimensions, this provision has not lead to any litigation before the Inter-American Court. Among all the judgements and advisory opinions that it has issued over the years, the Inter-American Court did not address article 12 specifically and exhaustively[326]. In addition, in its developments on article 1.1 of the American Convention prohibiting discrimination on all grounds, it has made only a few mentions of religious discrimination spread across the cases.

For example, in a 2003 judgement, the Inter-American Court was confronted with a case alleging a direct violation of article 12 of the American Convention. The IACHR had to

[325] This approach is also shared by article 18 of ICCPR. In the European context, the parent's right was added to the Convention by Protocol n° 1, in 1952. In addition, the wording used in Protocol 1 to the European Convention on Human Rights differs slightly from that employed in article 18 ICCPR and 12 ACHR, which drives with it distinctive nuances in the legal regime resulting from the provisions.

[326] MARTINÓN QUINTERO (R.), « El derecho a la libertad religiosa… », p. 596; CABALLERO OCHOA (J. L.), « Las Perspectivas del Derecho Fundamental de Libertad Religiosa en el Sistema Intreramericano de Protección a los Derechos Humanos », *IUS Revista Jurídica* [online: last accessed: 19/07/2022].

examine a prohibition measure, enacted by the Chilean authorities, preventing the exhibition of a film—The Last Temptation of Christ[327]. The Chilean authorities had considered the film deformed and diminished the image of Christ to such an extent that it amounted "to destroy[ing] the sincere beliefs of a great many people"[328]. Hence, relying on article 19(12) of the Constitution which provided for a "system of censorship for the exhibition and publicity of cinematographic productions"[329], the authorities took measures against the film's exhibition[330].

In its factual background and the legal issues it raised, the case was identical to a case previously examined by the ECtHR: *Otto-Preminger-Institut v. Austria*[331]. And both judgments are key for the development of religious freedom rights within their own context.

More precisely, the case confronted the IACHR with a conflict of rights. On the one hand, it was alleged that the applicant's right to freedom of expression was breached. To that regard, the Inter-American Commission argued that "the exercise of freedom of thought and expression [under article 13 of American Convention] shall not be subject to prior censorship"[332]. It highlighted that "the aim of this provision is to protect and encourage access to information, ideas and artistic expressions of all types and to strengthen pluralist democracy"[333]. On the other hand, by prohibiting its exhibition, the authorities were seeking to protect believers by protecting "the right to honor and reputation of Jesus Christ"[334]. In the Inter-American Commission's words: the "[r]ejection of the exhibition of the film was based

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[327] IACHR. Case of "The Last Temptation of Christ" (Olmedo Bustos et al.) v. Chile. Merits, Reparations and Costs. Judgment of February 5, 2001. Series C No. 73, paras. 60(c)-60(f).

[328] *Ibid.*, para. 78.

[329] *Ibid*., para. 60(a).

[330] In actual facts, the deformation of the image of Christ put forward by the Chilean Supreme Court had two branches. First, as the latter stated, it "destroy[ed] the sincere beliefs of a great many people". Second, it also hampered the values upon which Chile, as a nation, was built. *See*, *ibid*., para. 78.

[331] For a discussion of this judgment, *see supra*, Chapter 1, Section I.

[332] IACHR. Case of "The Last Temptation of Christ" (Olmedo Bustos et al.) v. Chile, para. 61.

[333] *Ibid*. After the Chilean Constitutional Court issued its final judgment upholding the prohibition, the government expressed its disagreement with the approach taken and endeavored constitutional reform of article 19(12) to be revised. *See*, *ibid.*, para. 62.

[334] *Ibid*., para. 61.

on the fact that [the film] would allegedly be offensive to the figure of Jesus Christ and therefore affected those who filed [the] petition (…), believers, and 'other persons who considered him a model for their way of life'"[335]. In its conclusions, the Commission even stated that this prohibition amounted to depriving the other members of society from the right to be informed and consequently change their religious orientation. In other words, prohibiting the exhibition violated the freedom of expression of the film's broadcasters, and also the freedom of religion and belief of all members of society who did not file any petition against it. Hence the Commission concluded the restriction violated both article 12 and 13 of the American Convention[336].

When adjudicating the case, the IACHR found state authorities had breached article 13—freedom of expression. But they did not violate article 12—freedom of religion and belief. In fact, it even found that the prohibition did not have any impact on the right to freedom of religion and belief. It stated, in the judgment, that "[i]n this case, (…) there is no evidence to prove that any of the freedoms embodied in Article 12 of the Convention have been violated. Indeed, the [Inter-American] Court understands that the prohibition of the exhibition of the film 'The Last Temptation of Christ' did not impair or deprive anyone of their right to maintain, change, profess or disseminate their religion or beliefs with total freedom"[337]. In other words, the IACHR focused on freedom of expression; it did not delve into the freedom of religion and belief despite the facts of the case[338].

From all the cases touching upon the religious condition of applicants or third individuals, the *Case of "The Last Temptation of Christ" (Olmedo Bustos et al.) v. Chile* was the only case that questioned explicitly religious freedom and article 12 of the American Convention. And,

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[335] *Ibid.*

[336] *See*, *ibid.*, paras. 60, 74.

[337] Case of "The Last Temptation of Christ" (Olmedo Bustos et al.) v. Chile, para. 78.

[338] The Inter-American Court's approach on article 12 differed radically from that of the Commission. It also contrasted with the approach taken by the European Court of human Rights, leaving aside the right of others to both receive the information contained in the film and to avoid being attacked or offended for their beliefs. These two angles were ignored by the IACHR; it chose to remain quite superficial in its assessment of article 12, despite references and citations made of ECtHR cases, particularly of *Otto-Preminger-Institut v. Austria*. *See ibid*., para. 69; CABALLERO … (J. L.), « Las Perspectivas del Derecho Fundamental de Libertad Religiosa en el Sistema… ».

in spite of it being so, the Inter-American Court did not take advantage of the facts to elaborate on religious freedom. Rather, the case seems to reveal a reluctance of the IACHR to elaborate on it in the circumstances of the case. It is as if the Inter-American Court avoided to delve into article 12, or to state exhaustively what religious freedom entails for its member-states. It is as if it avoided laying any autonomous regime for religious freedom, through this case, for its jurisdiction. These few developments contrast singularly with the ones made on article 13, regarding which the IACHR went on explaining, even in a Kantian narrative, the intimate ties linking freedom of expression with freedom of thought[339].

In all cases where aspects of religious freedom sparked, the Inter-American Court tended to consider them incidentally[340]. In other words, these aspects did not make the centre of the litigation, the main focus of the IACHR's adjudication, or the higher interest to be protected in the case[341]. They seem to be systematically integrated into a more complex and comprehensive set of features, which lead them to be discussed as aggregates to the case and the latter's factual background.

This mode of considering religion could be explained by the inter-American socio-historical trajectory regarding religion. Indeed, unlike Europe, religion in the inter-American context was not a primary cause for conflict or state partition. On the one hand, since the 'WASP' immigration of the past centuries, respect for religious freedom has come to be a founding feature of northern American societies. Indeed, despite tumults in the religious environment in

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339 *Ibid*., paras. 65-67.

340 Corte IDH. Caso de la Comunidad Mayagna (Sumo) Awas Tingni Vs. Nicaragua. Fondo, Reparaciones y Costas. Sentencia de 31 de agosto de 2001. Serie C No. 79; Corte IDH. Caso de la Comunidad Moiwana Vs. Surinam. Excepciones Preliminares, Fondo, Reparaciones y Costas. Sentencia 15 de junio de 2005. Serie C No. 124; Corte IDH. Caso Comunidad Indígena Yakye Axa Vs. Paraguay. Fondo Reparaciones y Costas. Sentencia 17 de junio de 2005. Serie C No. 125; Corte IDH. Caso Comunidad Indígena Yakye Axa Vs. Paraguay. Interpretación de la Sentencia de Fondo, Reparaciones y Costas. Sentencia de 6 de febrero de 2006. Serie C No. 142 ; Corte IDH. Caso de la Comunidad Moiwana Vs. Surinam. Interpretación de la Sentencia de Fondo, Reparaciones y Costas. Sentencia de 8 de febrero de 2006 Serie C No. 145; Corte IDH. Caso Comunidad Indígena Sawhoyamaxa Vs. Paraguay. Fondo, Reparaciones y Costas. Sentencia de 29 de marzo de 2006. Serie C No. 146; Corte IDH. Caso Chitay Nech y Otros Vs. Guatemala. Excepciones Preliminares, Fondo, Reparaciones y Costas. Sentencia de 25 de mayo de 2010; Corte IDH. Caso Atala Riffo y Niñas Vs. Chile. Fondo, Reparaciones y Costas. Sentencia de 24 de febrero de 2012. Serie C No. 239; Corte IDH. Caso Artavia Murillo y Otros ("Fecundación *in vitro*") Vs. Costa Rica. Excepciones Preliminares, Fondo, Reparaciones y Costas. Sentencia de 28 de noviembre de 2012. Serie C No. 257; Corte IDH. Caso I.V. Vs. Bolivia. Excepciones Preliminares, Fondo, Reparaciones y Costas. Sentencia de 30 de noviembre de 2016. Serie C No. 329.

341 MARTINÓN QUINTERO (R.), « El derecho a la libertad religiosa… », p. 596.

the first times that followed settlement, religious toleration grew quite rapidly as a necessity for society[342]. On the other hand, in Latin American countries, the violence and tensions between European colonizers and native peoples had a different rationale than the violence that took place in Europe, during the Reform for example. Violence in Latin America was mainly due to conquest, spoliation and exploitation of indigenous peoples and their lands; violence in Europe was motivated by the need to convert and eliminate heresy. In other words, the first sought political and economic domination; the second aimed at conserving the hegemony of one religion. Although christianization followed, religion was not the primary motive in the conquest of the Americas[343]. In fact, massive conversion to Christianity commenced at a time where indigenous religions disintegrated, at the time their power vanished—that is, when they ceased to be powerful providers of meaning for individuals[344]. Furthermore, in order to spread Christianity, missionaries adapted to the local cultures, to the mental patterns and religious practices of the indigenous peoples as they existed at the time[345]. Missionaries developed Christianity parting from observable practices and traditions—they christianized local religious practices, and endowed them with a specific Christian meaning[346]. A process which resembles the one adopted in the early days of the Church, when Europe, for instance, was transitioning from pagan and polytheistic religions of Antiquity to Christianity. In both cases, the christianization relied on the existing traditions, customs and

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[342] BEALE (H. K.), « Religious Freedom in American History », *The Historian*, Vol. 14, No. 1, 1951, pp. 46-47. The American society and the Canadian society do not appear to have followed the same dynamics regarding religion, religious freedom and religious plurality. In the beginnings of the United States of America as a society, religion proved to be quite a conflictual factor. In Canada, on the other hand, it seems to have been more a subject of rivalry in between the earliest colonizes—France and Great Britain. *See*, DOYLE (D.), « Religious Freedom in Canada », *Journal of Church and State*, Vol. 26, No. 3, 1984, pp. 413-435.

[343] This tends to amount from the fact that the means allocated for the missionary activities were far less than those allocated for the economic objectives. *See*, PUJOL (H.), « La christianisation de la Nouvelle-Espagne ou le rêve d'une église indienne : la praxis de l'évangélisation », *Cahiers d'étude du religieux. Recherches interdisciplinaires* [online], Numéro 10, 2012, 26 January 2012. Being that so, despite colonization's missionary motives were considered of paramount importance in the colonizing process, even as important as the economic benefits sought, the main axis of the colonizing process was the gain sought from the neo-colonies. *See*, DEAGAN (K.), « Colonial Origins and Colonial Transformations in Spanish America », *Historical Archaeology*, Vol. 37, No. 4, 2003, pp. 4-5; YEAGER (T. J.), « Encomienda or Slavery? The Spanish Crown's Choice of Labor Organization in Sixteenth- Century Spanish America », *The Journal of Economic History*, Vol. 55, No. 4, 1995, p. 844. As a result, as historical scholarship argues, religion had a lesser penetration in society.

[344] PUJOL (H.), « La christianisation de la Nouvelle-Espagne ou le rêve d'une église indienne : les agents de l'évangélisation », *Cahiers d'étude du religieux. Recherches interdisciplinaires* [online], Numéro 10, 2012, 26 January 2012, paras. 9-11.

[345] *Ibid.*, paras. 42-45.

[346] *Ibid.*, paras. 42-45, 49; PUJOL (H.), « La christianisation de la Nouvelle-Espagne ou le rêve d'une église indienne : la praxis de l'évangélisation »; BENOIT (J.-L.), « L'évangélisation des Indiens d'Amérique », *Amerika* [online], Numéro 8 — 2013, para. 21.

imaginary[347]. The endeavor had its part of destruction, conflict, massacres and spoliation. At the same time, it fostered specific social dynamics which resulted in a particular religiosity, at the individual level, devoid of the tensions that manipulation and power struggles between rulers can cause[348]. This type of religiosity may have tended to neutralize the tensions in relation with religion in the social realm, thus explaining the little number of cases involving religion before the courts.

Within the inter-American society as a whole, religion, as a social fact, does not seem to be a cleaving factor. That may be a reason for the little number of cases submitted to the IACHR on the matter. In addition, that may also explain the latter's avoidance of major developments on article 12 in the unique case—discussed above—that addresses it directly.

By opposition to this scarcity of religious cases, the Inter-American Court delivered an abundant jurisprudence on other rights of the American Convention. The judgments issued so far, along with the activity of the Commission, indicate a focus "on cases of breach of the rights to life and personal integrity, judicial guarantees and political rights"[349].

From such a focus, a specific stance towards the American Convention seems to have emerged. A specific stance which seeks to protect individuals at the roots, parting from their own circumstances and sociological characteristics. Indeed, the IACHR's judgments reveal that, when applying the American Convention, the Inter-American Court centers its

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[347] The difference resides rather in the posterior development of Christianity within Europe, when European Kingdoms and Empires were consolidated and reached the peak of their might. The Reform, for example, was the source of a religious violence tat parted Europe in two 'blocks': the Catholic and the Protestant. These dynamics seem to have left conflictive traces that can explain the cleaving aspect that religion is endowed with in the European realm.

[348] As R. Blancarte argues, the conquest and evangelization of the Americas gave way to a superficial catholicity, syncretic and little supported by clerical institutions. *See*, BLANCARTE (R.), « Laïcité au Mexique et en Amérique Latine. Comparaisons », *Archives de sciences sociales des religions*, Numéro 146 — avril-juin 2009, para. 44. In other words, due to lack of means, the Church did not have as strong an impact on individuals and society as in the European context. This gave way to the superficiality in individual religiosity, which tends to neutralize religious and inter-religious tensions from the roots.

[349] ROMERO PEREZ (X. L.), « La libertad religiosa en el Sistema Interamericano de Protección de los Derechos Humanos (Análisis comparativo con el ordenamiento jurídico colombiano) », *Revista Derecho del Estado*, n° 29, 2012, pp. 216-217. The original wording, in Spanish language, reads as follows: "el Sistema Interamericano se ha centrado en atender y resolver casos en los que se vulneran los derechos a la vida y la integridad personal, las garantías judiciales y los derechos políticos''.

assessment of the case on the particular condition of the persons affected. In that, it contrasts radically with the ECtHR's focus on public order and Convention values.

II. Life Plan rather than Religion.

As previously discussed, the *Case of "The Last Temptation of Christ" (Olmedo Bustos et al.) v. Chile* tends to put into the light a difference of approach that characterizes the ECtHR and the IACHR. The reasoning followed by both Courts, their points of focus, the utmost goods they intend to safeguard appear all to be different. Such differences can only stem from a difference of approach regarding the basic documents to apply. The ECtHR, as explored in the previous chapter, tends to follow an axiological approach, which leads to consider religion and religious manifestations as a set of values. In that, the Court's stance before religion seems to be almost objective, hardly connected to the specific contextual feature of the cases. Contrasting with this approach, the IACHR seems to be more connected to its context of application at the ground level. It seems to conceive religion as an individual phenomenon, part of the life plan of a human person (1). Following, the IACHR holds the actual individuals, as bearers of human rights that states have to guarantee, as the cornerstones of its whole approach to the American Convention (2).

1. Religion: a feature of the 'life plan'.

First, the Inter-American Court did not issue many judgments or advisory opinions discussing religious freedom within the Americas. Nevertheless, a particular conception of religion and its role in society seems to emanate from a few cases related to religion, religious rights and religious freedom. For example, in an advisory opinion stating state obligations and Convention rights in relation with various issues related to gender identity[350], the Inter-American Court, among the panel of issues presented to it, addressed that of the possible links in between religious convictions and the right of same-sex couples to marriage. Indeed, the Inter-American Court explains that "at times, the opposition to the marriage of same-sex

[350] IACHR. Gender identity, and equality and non-discrimination with regard to same-sex couples. State obligations in relation to change of name, gender identity, and rights deriving from a relationship between same-sex couples (interpretation and scope of Articles 1(1), 3, 7, 11(2), 13, 17, 18 and 24, in relation to Article 1, of the American Convention on Human Rights). Advisory Opinion OC-24/17 of November 24, 2017. Series A No. 24.

couples is based on philosophical or religious convictions"[351]. Thus, recognizing that religion can have an impact on the issue, it proceeds with elaborating on it.

When delving into the issue, the Inter-American Court acknowledges first the importance of religious convictions for believers[352]. Following, it states: "these convictions cannot be used as a parameter of conventionality because the Court could not use them as an interpretative guide when determining the rights of [the] human being. In that sense, it is the Court's opinion that such convictions cannot condition what the Convention establishes in relation to discrimination based on sexual orientation. As such, in democratic societies there must exist a peaceful coexistence between the secular and the religious spheres, implying therefore that the role of the States and of this Court is to recognize the sphere inhabited by each of them, and never force one into the sphere of the other"[353].

With this *dictum*, the Inter-American Court declares that any legislation or regulation barring same-sex couples from marriage is incompatible with the American Convention, be it based on religious commandments or philosophical imperatives. Law and religion do not belong to the same dimension. The law falls within the secular realm; therefore, the duty of states, and that of the Court, is to ensure that individuals benefit from their human rights, regardless of whether their religious or philosophical convictions happen to be in line with the ones chosen by a state and implemented through the law. Conversely, religion remains the realm of the inner sphere of individuals, it belongs to the private dimensions of the latter, it is the expression of their inner choices. As a consequence, any piece of legislation or any regulation based on religion, which contravenes the rights enshrined into the American Convention, will have to be reformed. To be of a religious nature does not prevent state measures from breaching the Convention.

In other words, the Inter-American Court declares that entering a marriage or any type of union is a "free and autonomous choice [which] forms part of the dignity of each person and

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[351] *Ibid*, para. 223.

[352] *Ibid*.

[353] *Ibid*.

is intrinsic to the most intimate and relevant aspects of his or her identity and life plan"[354]. Hence, when regulating the matter, the American Convention requires states to ensure that each person is able to enter a marriage, regardless of any of their characteristics. States cannot resort to religion if the latter's outcome is to deprive any person from entering a marriage. As a result, for religion to be a basis for legislating, the laws enacted ought to be in line with the American Convention—and guarantee the right to freely pursue one's life plan[355].

These *dicta* reveal that, for the Inter-American Court, religion is a component of a person's life plan. Given religion belongs to the inner sphere of the individual, whether or not to follow a religion is an individual personal choice. Embracing a religion or any philosophical conviction is an expression of the inner dimension of the individual. It is one parameter in the life that an individual chooses—it is one parameter of their life plan, which depends on the life they want to have. Hence the IACHR's distinction of the religious and the secular[356]. Hence, also, the obligation for states to ensure that, whichever choice individuals opt for, they may fulfill it. In fact, the life plan and the development of the self is the Inter-American Court's main focus when interpreting the American Convention on Human Rights or laying the content of a right the latter enshrines[357]. According to the IACHR's developments, to ensure that individuals can fulfill their life plan seems to be the utmost objective of the American Convention, the ultimate aim of the rights the latter enshrines. It even appears to be

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[354] *Ibid.*, para. 225.

[355] In fact, the Court goes even further, it "deems inadmissible the existence of two types of formal unions to legally constitute the heterosexual and homosexual cohabiting community, because this would create a distinction based on an individual's sexual orientation that would be discriminatory and, therefore, incompatible with the American Convention". *See*, *ibid.*, para. 224.

[356] *Ibid*., para. 223.

[357] The first judgment in which the IACHR used the concept was IACHR. Case of Loayza Tamayo v. Peru. Reparations and Costs. Judgment of November 27, 1998. Series C No. 42, paras. 147-148. In this case, the Peruvian authorities arrested María Elena Loayza Tamayo, a university professor, without prior investigation nor arrest warrant. The victim was then tried, before a faceless court, for treason and terrorism; she was barred from communication with her relatives and kept in detention even after she was acquitted. Following the judgment on the merits, issued 17 September 1997, the IACHR issued the aforementioned judgment on reparations and costs, in which it elaborated and developed on the 'life plan' of the victim. Since then, the IACHR used the concept of 'life plan' in several key cases and advisory opinion, which show its importance for the interpretation of the American Convention. *See*, IACHR. Gender identity, and equality and non-discrimination with regard to same-sex couples, paras. 82, 225; IACHR. Case of Atala Riffo and daughters v. Chile. Merits, Reparations and Costs. Judgment of February 24, 2012. Series C No. 239, para. 133; IACHR. Case of I.V. v. Bolivia. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 30, 2016. Series C No. 329, paras. 220, 246; IACHR. Case of Artavia Murillo y Otros ("*Fecundación in Vitro*") v. Costa Rica. Merits, Reparations and Costs. Judgment of November 28, 2012, paras. 281, 283, 300, 363.

the key through which the Inter-American Court interprets the rights enshrined therein. As J. F. Calderon Gamboa argues, "the [Inter-American] Court considers (…) the *life plan* as the most important *dimension of the ontological freedom in which the human being consists*"[358] [original emphasis; unofficial translation].

With such concepts as 'life plan' making its core focus, the Inter-American Court's approach to the American Convention seems to embrace a particular philosophical conception on human rights. Adopting the 'life plan' as main focus when addressing cases calls for a complex, multidimensional assessment of the case and the alleged victim's situation. The individual 'life plan' is, indeed, intimately connected to individual liberty[359]. It is deeply connected to the personal autonomy of the individual and the full development of personality[360]. According to the Inter-American Court, it even calls for a progressive interpretation of the American Convention, making state's imperative to accompany and favor the advance of society[361].

2. A sociological interpretation of Religion.

As the Inter-American Court defines it, the "concept of a 'life plan' is akin to the concept of personal fulfillment, which in turn is based on the options that an individual may have for leading his life and achieving the goal that he sets for himself. Strictly speaking, those options are the manifestation and guarantee of freedom. An individual can hardly be described as truly free if he does not have options to pursue in life and to carry that life to its natural conclusion. Those options, in themselves, have an important existential value. Hence, their elimination or

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[358] CALDERON GAMBOA (J. F.), *Reparación del Daño al Proyecto de Vida por Violaciones a Derechos Humanos*, Editorial Porrúa, Mexico, 2005, p. 26. The original quotation, in Spanish, reads as follows: "La Corte, concibe acertadamente al *proyecto de vida* como la más importante *dimensión de la libertad ontológica en que consiste el ser humano*" [Original emphasis].

[359] *Ibid*., pp. 42-43.

[360] Gender identity, and equality and non-discrimination with regard to same-sex couples, paras. 87, 88, 226.

[361] Case of Atala Riffo and daughters v. Chile. Merits, Reparations and Costs, para. 120.

curtailment objectively abridges freedom and constitutes the loss of a valuable asset, a loss that this Court cannot disregard"[362].

Therefore, to bear the individual life plan as a focus reveals a specific rationale at work when assessing cases. It reveals a specific stance towards the Inter-American Convention, that the IACHR adopts when elaborating upon the rights the latter enshrines. More precisely, considering the life plan of a person calls for a multidimensional assessment of the person's situation (A). It calls for dwelling on the person's particular characteristics as individual, their intimate beliefs and their conditions of living. From these elements, a global portrait of the person emerges, which allows to determine a sort of plan structuring the course of their life. As the Inter-American Court explains, a person's "'life plan' (…) takes account of her calling in life, her particular circumstances, her potentialities, and her ambitions, thus permitting her to set for herself, in a reasonable manner, specific goals, and to attain those goals"[363].

Being so, the 'life plan', as the IACHR intends it, carries also a teleological dimension. It leads to determining what has been frustrated in a person's normal course of life. In other words, in order to consider the personal life plan of individuals when applying the American Convention, it is necessary to first determine their course of life in a such a way as to see what goals they could reasonably attain. For adjudication purposes, such an in-depth, multidimensional assessment of the characteristics and conditions of living of the individuals can only be carried "*from the perspective of the victims*, of their needs, aspirations and claims"[364] [original emphasis]. That is, it can only be carried when the case is examined through the eyes of the victims (B).

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[362] Loayza Tamayo v. Peru. Reparations and Costs, para. 148. Hence, found the Court, the "notion is different from the notions of special damages and loss of earnings. It is definitely not the same as the immediate and direct harm to a victim's assets, as in the case of 'indirect or consequential damages.' The concept of lost earnings refers solely to the loss of future economic earnings that can be quantified by certain measurable and objective indicators. The so-called 'life plan,' deals with the full self-actualisation of the person concerned and takes account of her calling in life, her particular circumstances, her potentialities, and her ambitions, thus permitting her to set for herself, in a reasonable manner, specific goals, and to attain those goals". *See*, Loayza Tamayo v. Peru. Reparations and Costs, para. 147.

[363] Case of Loayza Tamayo v. Peru, para. 147. *See*, also, CALDERON GAMBOA (J. F.), *Reparación del Daño al Proyecto de Vida por Violaciones a Derechos Humanos*, p. 46.

[364] Case of Loayza Tamayo v. Peru. Reparations and Costs, Joint Concurring Opinion of Judges A. A. Cançado Trindade and A. Abreu-Burelli, para. 6.

A. A multidimensional sociological assessment of the victim's condition: As explained above, when applying the American Convention, the IACHR tends to delve into the proper characteristics of the alleged victims and examine the case accordingly. It considers the alleged victims' sociological features, and intends to drive what would the normal evolution of their life be, considering the choices they made for themselves. Once these aspects determined, the IACHR confronts them to the consequences resulting from state measures or the corresponding treatment of the alleged victims, and then rules upon the case. That is how it considered the issues raised in its Advisory Opinion on *Gender identity, and equality and non-discrimination with regard to same-sex couples* or the other mentioned Case of Atala Riffo and daughters v. Chile.

Such a focus reveals a specific rationale at work when assessing cases. It reveals a specific stance, that the Inter-American Court adopts when applying the American Convention, which is rooted in a particular philosophy of human rights. Precisely, human rights, in their philosophy, are conceived as the most basic rights that individuals could enjoy. They correspond to the 'human' dimension of the individual, that they intend to fulfill. In other words, their purpose, as rights, is to grant their holders with the guarantees that enable them to live as they choose for themselves. Following this philosophical stream, the Inter-American Court of Human Rights seeks to endow individuals with the possibility to express their personality and live according to their conceptions, convictions and beliefs at all times, free from coercion. It seeks to endow individuals with the maximum freedom and possibility to express the full extent of their personality.

From this perspective of the individual 'life plan', religion becomes one feature among others that constitute 'the individual', intended as a complex construct. For it deals with specific aspects of individual and social life, religion is one feature among the set of sociological features making individuals and their life plan. In other words, religion integrates the life plan of a person through the specific dimensions it considers. It is one factor among others for the full realization of the personal autonomy and the full development of personality.

Following this rationale, the Inter-American Court issued key findings on religion, even in cases which did not involve any claim of breach of religious rights. In fact, the Inter-American Court did not consider the religious aspects of the cases from a strictly religious point of view. Rather, it considered them from the larger perspective of spirituality. For example, in *Comunidad Moiwana v. Surinam*[365], the Court was confronted with the case of an indigenous community, which, following armed conflicts with the military, suffered mass killings and displacement from its ancestral territory. More precisely, after the military *coup d'Etat* of 25 February 1980, several armed conflicts occurred between the Surinam military forces and the concerned community, in which hundreds of the latter's members died or were displaced from their land[366]. When assessing the case, the IACHR examined first the situation of the community, its cultural traits and spiritual practices, before developing its reasoning and issuing its final findings[367]. In doing so, the IACHR argued that the "community's connection to its traditional land is of vital spiritual, cultural and material importance"[368]. More so, it added that "in order (…) to preserve its very identity and integrity, the Moiwana community members must maintain a fluid and multidimensional relationship with their ancestral lands"[369].

In other words, before determining whether there was violation of article 5 of the American Convention—which protects the right to humane treatment—, the IACHR conducted first a multidimensional assessment of the community's condition, encompassing its anthropological characteristics and spiritual practices. Only then it delivered its conclusion on the issue, finding "that the Moiwana community members have endured significant emotional, psychological, spiritual and economic hardship — suffering to a such a degree as to result in the State's violation of Article 5(1) of the American Convention"[370].

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[365] IACHR. Case of the Moiwana Community v. Suriname. Preliminary Objections, Merits, Reparations and Costs. Judgment of June 15, 2005. Series C No. 124.

[366] *Ibid.*, paras. 86.12-86.20.

[367] *Ibid.*, paras. 86.6-86.10, 95-96, 100-101.

[368] *Ibid.*, para. 101.

[369] *Ibid.*

[370] *Ibid.*, para. 103.

Following the same reasoning premises, the IACHR also found that the state violated article the right to property, protected by article 21 of the American Convention, as multiple members of the community were displaced.

The key, in the case, was the fact that "[t]he relationship of an indigenous community with its land must be recognized and understood as the fundamental basis of its culture, spiritual life, integrity, and economic survival"[371]. Regarding their religious beliefs specifically, the Court added that, for such peoples, the "communal nexus with the ancestral territory is not merely a matter of possession and production, but rather consists in material and spiritual elements that must be fully integrated and enjoyed by the community, so that it may preserve its cultural legacy and pass it on to future generations"[372].

As this case reveals, the Inter-American Court considers the spiritual dimension as a feature of the whole aggregate of features that a human person constitutes. The violations it found were mainly the result of the prejudice that the community suffered in relation to its religious beliefs regarding the bonds attaching altogether the living, the dead and the territories in which both are, or were used to, living[373]. In addition, the IACHR even took the spiritual damage into account when determining the immaterial damage caused to the community, and issuing the reparations that the state has to execute[374].

With the same special focus, and following the same logic, several cases protecting spiritual rights of indigenous communities were issued by the Inter-American Court. Due to their

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[371] *Ibid*.

[372] *Ibid*.

[373] HENNEBEL (L.), « La protection de 'l'intégrité spirituelle' des indigènes. Réflexions sur l'arrêt de la Cour interaméricaine des droits de l'homme dans l'affaire Comunidad Moiwana c. Suriname du 15 juin 2005 », *Revue Trimestrielle des Droits de l'Homme*, Volume 66 — 2006, p. 261.

[374] IACHR. Case of the Moiwana Community v. Suriname, paras. 195-196.

specific nature, these spiritual rights were mainly guaranteed in relation to the lands, that is, through land property[375] and quality of the environment[376].

This focus considering religion as one among other characteristics of the individual further reveals a key aspect of the Inter-American Court's *modus operandi* when assessing a case. As explained *supra*, the Inter-American Court considers the cases in their multidimensionality, taking into account various facts and realities related to the sociological condition of the alleged victims. As the Court's judgments reveal, these elements constitute the basis of the Court's adjudication. They appear to be the constitutive elements of the cases to examine, and the conceptual framework of the Court when adjudicating, when confronting the facts of a case.

B. The victim as heuristics: Such a deep and multidimensional assessment of the victim's condition comprises elements that are internal to the victims. It comprises elements which are characteristics of the victim as a human person. Before adjudicating, the Inter-American Court dwells on the victim's socio-economic background, their beliefs and their convictions, and even the psychological aftereffects of the violations[377]. Elements which are proper to the *forum internum* of each person.

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[375] IACHR. Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua. Merits, Reparations and Costs. Judgment of August 31, 2001. Series C No. 79, para. 149; IACHR. Case of the Moiwana Community v. Suriname, para. 131; IACHR. Case of the Yakye Axa Indigenous Community v. Paraguay. Merits, Reparations and Costs. Judgment of June 17, 2005. Series C No. 125, para. 131; IACHR, Case of the Saramaka People v. Suriname. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 28, 2007 Series C No. 172, para. 90-91; IACHR, Case of the Xákmok Kásek Indigenous Community. v. Paraguay. Merits, Reparations and Costs. Judgment of August 24, 2010. Series C No. 214, para. 86; IACHR, Case of the Community Garifuna Triunfo de la Cruz and its members v. Honduras. Merits, Reparations and Costs. Judgment of October 8, 2015. Series C No. 305, paras. 101, 166; IACHR, Case of the Kaliña and Lokono Peoples v. Suriname. Merits, Reparations and Costs. Judgment of November 25, 2015. Series C No. 309, paras. 120, 151; IACHR. Case of the Sawhoyamaxa Indigenous Community v. Paraguay. Merits, Reparations and Costs. Judgment of March 29, 2006. Series C No. 146, para. 131; IACHR, Case of Kichwa Indigenous People of Sarayaku v. Ecuador. Merits and Reparations. Judgment of June 27, 2012. Series C No. 245, para. 148; IACHR, Case of Salvador Chiriboga v. Ecuador. Preliminary Objections and Merits. Judgment of May 6, 2008 Series C No. 179, para. 74.

[376] IACHR, Case of the Indigenous Communities of the Lhaka Honhat Association (Our Land) v. Argentina. Merits, Reparations and Costs. Judgment of February 6, 2020. Series C No. 400, para. 251.

[377] *See*, for the previously discussed *Moiwana Community v. Surinam*, HENNEBEL (L.), « La protection de 'l'intégrité spirituelle' des indigènes », p. 274.

Due to their nature, these elements fail to be grasped by an external examination. Hence, when conducting its analysis of the facts, the Inter-American Court delves concretely into the victim's condition as a human person and dwells on the realities that the latter may have suffered. The analysis conducted, thus, appears to be "purely relative and subjective"[378]. In other words, when adjudicating, the Court substitutes itself to the victim and explores what, in the normal course of the latter's life, has been thwarted or frustrated. When the dimension that happens to be frustrated, in the normal course of the victim's life, is covered by a provision of the American Convention, the treatments causing the frustration become violations of the latter.

Consequently, the Inter-American Court's focal point, when applying the American Convention, is the individual, the alleged victim, the human person behind the legal category of 'victim' in its entire complexity. Indeed, the Court tends to "ignore and reject any conception of an abstract nature regarding the human person"[379] [unofficial translation] in favor of a pragmatic and complex approach that takes into account the victim's most inner aspects. In other words, as its case-law abundantly exemplifies, the IACHR tends to substitute itself to the victims before adjudicating. It tends to dwell on the facts from the victim's perspective; it tends to look at the entire case 'with the eyes if the victim'. This *modus operandi* reveals the Inter-American Court' global approach to the American Convention, which consists of endowing its provisions with a "maximal scope, a hyper-protective [nature], which imposes to take into account the cultural particularities [of the victims]"[380] [unofficial translation].

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[378] *Ibid.*, p. 275.

[379] *Ibid*.

[380] *Ibid*. The entire citation, in its original French wording, reads as follows: "La Cour propose alors une évaluation purement relative et subjective. Elle ignore et rejette toute conception abstraite de la personne humaine pour préférer cette approche qui l'incite à prendre en compte les croyances religieuses des victimes. L'objectif de la Cour consiste, par le biais de l'interprétation, à donner aux droits de l'homme consacrés dans la Convention une ampleur maximale, hyper-protectrice, qui impose la prise en compte des particularités culturelles. Dans l'arrêt Comunidad Moiwana c. Suriname, l'ouverture culturelle de la Cour se traduit par la consécration juridique d'une forme de dommage spirituel. Le Juge Antonio Cançado Trindade y voit une forme de dommage moral aggravé qui affecte directement les croyances des êtres humains et leurs relations avec leurs morts. Dans le cas d'espèce, le dommage subi par les membres de la Communauté affectait les vivants et les morts mais aussi, selon les croyances, les générations futures. Le dommage spirituel prend en considération cette dimension culturelle et religieuse pour qualifier et étendre la notion de dommage moral".

Thus, the IACHR's heuristics for assessing human rights violations appear to be the human person in its sociological complexity. The actual individuals behind the legal category of 'victim' constitute the lenses through which the Inter-American Court considers the cases and their factual background. This approach contrasts with the ECtHR's approach, whose heuristics are the values of the European Convention. In addition, this contrast in heuristics leads to a contrast in the way religious presence is considered by both courts. It seems, indeed, to affect the way both courts deal with religious diversity.

III. Religious Pluralism in the IACHR's jurisprudence.

Seeking to maximize individual liberty and self-development by considering cases through the eyes of the victim, the Inter-American Court's approach tends to guarantee to everyone, on the religious dimension, the rights to adopt any belief and to practice the latter's corresponding teachings. When adopted and embraced, religious and spiritual beliefs lie at the heart of a person's life; they become core components of the life one wants to live. In other words, when embraced, religious and spiritual beliefs become core components of a person's life plan. Following, the Court's "hyper-protective"[381] approach would grant the right for any person to hold and practice their spiritual beliefs, whichever they be, provided said beliefs be genuinely embraced by the person to form part of their life project. Whenever individuals embrace beliefs as constitutive elements of their life plan, the Court's approach would yield in protecting those beliefs and granting individuals the right to manifest them through practice.

To date, the Inter-American Court has not faced any case arguing a breach of religious freedom as such. It has not faced any case where violations have been specifically directed towards the victims' religious rights. It did not face, for example, state measures or laws forbidding, on grounds of health or public order, practices that are considered as religious and essential by religious minorities. Unlike the ECtHR[382], the United Nations' Human Rights

[381] *Ibid*.

[382] ECtHR, Third Section, Decision, 06/05/2014, *Alida Maria Fränklin-Beentjes and Ceflu-Luz Da Floresta v. the Netherlands*, Application n° 28167/07.

Committee[383] or the United States Supreme Court[384], the Inter-American Court did not face a case where religious claims contravened state laws and regulations at the same time as questioning the established social order within society[385]. The IACHR's approach to religious manifestations may therefore still be in elaboration.

That being said, the IACHR's focus on the particular condition of the victims still has structural outcomes on religious freedom. As mentioned above, it would yield in protecting any belief—and the corresponding practices—that integrates the victim's "cosmovision"[386]. It would lead to endowing individuals with the right to hold and to practice their beliefs even against state regulations. That is, any state measure, regulation or law impeding individuals from holding and manifesting their most inner beliefs, religious or spiritual, would amount to breaching the American Convention. The Inter-American Court's approach would thus lead to a situation of zero or few limitations of religious freedom rights, termed as a 'deregulated market' by the religious economy framework.

According to Market Economy model, a deregulated religious market is characterized by a low to inexistent formal ties between states and religions. In such a perspective, the "*regulatory agencies for religion are abolished*"[387] [italics in the original text] and religion is relegated to the social realm exclusively, thus leaving individuals free to adopt any religion present therein. In other words, in a deregulated market, "[r]*eligious organizations are*

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[383] HRC, Views, 31/10/2007, *Prince v. South Africa*, communication n° 1474/2006.

[384] RICHARDSON (J. T.), *ed.*, *Regulating Religion. Case Studies From Around the Globe*, New York, Kluwer Academic/Plenum Publishers, 2004, pp. 535-551.

[385] For a discussion on the use of prohibited substances, especially within the Inter-American jurisdiction, *see* CAIUBY LABATE (B.), *ed.*, CAVNAR (C.), *ed.*, *Prohibition, Religious Freedom, and Human Rights. Regulating Traditional Drug Use*, Heidelberg, Springer, 2014, 254 p.

[386] ARLETTAZ (F.), « La libertad religiosa en el Sistema Interamericano de Derechos Humanos », *Revista Internacional de Derechos Humanos*, Numero 1 — 2011, pp. 305, 316, 320, 326; MARTINÓN QUINTERO (R.), « El derecho a la libertad religiosa en los sistemas regionales de protección de derechos humanos de Europa y América », p. 609; MOSQUERA (S.), « Reflexiones a partir del estudio de casos sobre libertad religiosa en el sistema interamericano de protección de los derechos humanos », p. 350. *See*, also, Judge A. A. Cançado Trindade's Separate Opinion *in Moiwana Community v. Surinam*, paras. 51, 77.

[387] FINKE (R.), « Religious Deregulation: Origins and Consequences », *Journal of Church and State*, 1990, Vol. 32, No. 3, p. 620. The author argues that, furthermore, this situation augments "[R]*eligious diversity and competition*" and "*increases the level of religious mobilization*" [italics in the original text]. *See*, *ibid.*, pp. 621-622.

separated from the secular institutions of government"[388] [italics in the original text], subjecting adoption of religious beliefs and practice to individual choice. For example, as Roger Finke argues, the disestablishment clause—introduced by 1791 First Amendment to the Constitution—was the origin of the deregulation of the United States' religious market, and carried along consequences that were unexpected at the time[389].

In its Advisory Opinion on *Gender identity, and equality and non-discrimination with regard to same-sex couples*, the IACHR found that "in democratic societies there must exist a peaceful coexistence between the secular and the religious spheres, implying therefore that the role of the States and of this Court is to recognize the sphere inhabited by each of them, and never force one into the sphere of the other"[390].

By this *dictum*, the Inter-American Court declares that religion and society—"the secular"—belong to two distinct dimensions. Its role, as a court, and that of the state are to recognize these two spheres without causing them to merge. In other words, the IACHR or its state-parties may take religion into account in their regulatory activity, when enacting laws, applying the American Convention or interpreting the rights enshrined therein; they cannot, however, bear religion as basic foundation of the laws they enact or measures they take. Religion, according to the Inter-American Court, cannot be a basis for state regulations—*a fortiori* in relation with "the rights of [the] human being"[391]. Instead, any interpretation and application of the American Convention, by state-parties or the Court itself, ought to aim at guaranteeing individual personal autonomy and full development of personality[392], as guided by the life plan of individuals[393] and the advance of society[394].

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[388] Ibid., p. 619.

[389] *Ibid*., pp. 609-610.

[390] IACHR. Gender identity, and equality and non-discrimination with regard to same-sex couples (…). Advisory Opinion OC-24/17, para. 223.

[391] *Ibid.*, para. 223.

[392] *Ibid.*, paras. 87, 88, 226.

[393] Case of Loayza Tamayo v. Peru. Reparations and Costs, paras. 147-148

[394] Case of Atala Riffo and daughters v. Chile, para. 120.

Coupled with the interpretative principles developed in the afore-discussed cases, the *dictum* issued in its advisory opinion *Gender identity, and equality and non-discrimination with regard to same-sex couples* may amount to what could be a 'semi-disestablishment'[395] regime depriving religion from any impact on human rights issues. And in parallel, at the individual level, it tends to guarantee for everyone the right to hold any belief and to practice the corresponding teachings. Sitting in between these two wings, the Inter-American Court's approach seems to be made in such a way as to embraces all the diversity that happens to exist, at any particular time, within its society. Hence the pluralistic system that stems from its jurisprudence appears to be marked with a strong inclusiveness and a strong individualism, which corresponds to the deregulated market configuration in its most complete form. On the one hand, it includes any religious belief and practice, and, on the other hand, individuals are free to settle by themselves the beliefs integrating their cosmovision and life project.

Both in its approach and outcome, the IACHR's differs from that of the ECtHR on religion. Despite the scarcity of cases allowing deeper developments, the Inter-American Court already made crucial statements which settle clearly the contours of religious freedom for its jurisdiction. These statements were made possible thanks to a complex global approach to the American Convention, and to a particular *modus operandi* when applying or interpreting the latter. Aimed at enhancing the human development of the right holders, the IACHR's interpretation of the Convention is furthermore original, complex, consistent, and harmonizes all the provisions of the American Convention. Indeed, from the case-law appears that the Inter-American Court conceives the American Convention as one instrument made of different and complementary articles. That is, the American Convention is one, and its provisions cover different aspects of the human life. This complex approach unifies all the provisions, which merge into one global legal instrument—the American Convention.

In fact, its approach to the American Convention in its exhaustivity, to religious freedom in particular and to pluralism more specifically makes of the IACHR a unique human rights

[395] In this configuration, the disconnection between religion and states in matters of human rights appears to be clear. However, the Inter-American Court's *dicta* do not impact other types of ties that religions and states can maintain. For example, they do not appear to have any impact on official recognition, legal statuses, financing or any system of state-Church relationships as such. As adopted domestically, disestablishment clauses generally provide for regulations of such aspects, and precise the legal status of religious organizations. Hence the 'semi' nature of the disestablishment regime argued.

protection body. Besides its distinctions with the ECtHR, the IACHR's approach appears to diverge structurally from the United Nations' Human Rights Committee (the Committee/ UNHRC/HRC) as well, which offers yet a distinct model for the development of religious freedom in international human rights law.

Chapter 3. The United Nations Human Rights Committee: a 'distanciated' approach.

The United Nations' Human Rights Committee has developed quite a specific approach to the individual right to freedom of thought, conscience and belief as well. Just as the ECtHR and the IACHR, the Committee developed its own *modus operandi* when addressing claims regarding the said right, and its own principles to abide by when elaborating upon it. This approach, which bears common elements with that of the IACHR, may be explained mainly by the juridic-institutional context surrounding the Committee and its work, which appears to be different than that of the two regional Courts discussed above.

The HRC is one of the United Nations' bodies in charge of human rights issues. More precisely, its mandate is to ensure and monitor the implementation of the International Covenant on Civil and Political Rights (ICCPR) by the states who ratified it. The ICCPR was adopted by the General Assembly of the United Nations on the 16th of December 1966, in an effort to develop and endow the rights proclaimed by the Universal Declaration of Human Rights with a legal dimension. As such, it a legally binding treaty for those states who ratify it. The Covenant entered into force on the 23rd of March 1976, and the Committee, established under its article 28, then started its missions of monitoring its implementation.

In order to complete this mission, the Committee maintains regular contacts with each state-party to the ICCPR. For example, it receives regular reports from state-parties through a cycle of eight years that starts on the first year following the ratification of the Covenant. In other words, state-parties provide the Committee with regular reports on their implementation and application of the Covenant—the first year after they ratified it and then every eight years—, in response to which the Committee issues comments and recommendations in order to guide them, whichever their record in the matter, towards a better application of their obligations[396].

[396] For a complete overview on the HRC, its work and mandate, *see* https://www.ohchr.org/en/treaty-bodies/ccpr/introduction-committee (last accessed: 02/10/2022). On the 2nd of October 2022, the ICCPR counted with 173 state-parties and 6 signatories. *See* the following UN database: https://indicators.ohchr.org/ (last accessed: 02/10/2022).

However, this constructive dialogue in between state-parties and the Committee is not the only means for the latter to monitor the human rights situation in a given country. The Committee can indeed consider inter-state complaints, under article 41 ICCPR; it can examine individual complaints, as provided in the optional Protocol to the Covenant, adopted on the 16th of December 1966; and it can issue General Comments substantiating the content of an ICCPR right[397]. For instance, the Committee substantiated the right to freedom of thought, conscience and belief in its General Comment n° 22, issued on the 30th of July 1993[398].

For the ICCPR has been adopted by the UN General Assembly and ratified by 173 states across the world, the Committee's jurisdiction is not limited to a particular geographical or cultural area. The states making the jurisdiction of the Committee are spread over the five continents, representing almost all cultures and traditions of the world. Unlike the two regional Courts discussed in the previous chapters, the Committee has a wider jurisdiction. Its member-states do not share any common culture, History, or traditional approaches upon which it can rely when elaborating its Views or delivering any interpretation of an ICCPR right. In other words, the Committee's jurisdiction encompasses quite distinct cultures and societies, with quite distinct historical trajectories. Its member-states have not been unified by any socio-historical dynamic; their cultural patterns still differ quite widely. This feature is key when it comes to understanding the work, Views and elaborations of the Committee. The vast distinctions of its member-states deprive the Committee from the legitimacy to elaborate thoroughly upon ICCPR rights as the ECtHR and IACHR do with those of their respective treaties. Member states to the ICCPR, even those who ratified the Optional Protocol to the latter[399], were subject to vastly distinct socio-historical dynamics, in a way they do not appear to share any common framework of meaning necessary for the development of rights, in their core substance. Unlike the ECtHR, unlike the IACHR, it appears that the Committee cannot rely on any framework of meaning shared by the state-parties to the ICCPR in order to

[397] As of the 2nd of October 2022, the Committee had issued 37 General Comments and 1232 Views. This research was carried using the database provided by the Office of the United Nations High Commissioner for Human Rights. Regarding article 18 ICCPR specifically, the research shows a total of 73 Views issued by the HRC.

[398] HRC, General Comment n° 22, CCPR/C/21/Rev.1/Add.4, 27/09/1993.

[399] Only states who ratified the first Optional Protocol to the Covenant can be subject to individual communications from individuals claiming a breach of their rights.

substantiate the latter's rights. Consequently, the HRC finds itself in a particular position when elaborating upon the content of a right, *a fortiori* those rights with deep social ramifications as the right to freedom of thought, conscience and belief.

Furthermore, despite being integrated in a complex institutional structure made of several organs, committees and applicable treaties, the Committee is in charge of the sole treaty that incorporates a complete provision of religious freedom. In the United Nations' human rights system, nine treaties have been adopted in relation to various human rights[400], each of which provides for a specific independent committee in charge of monitoring its implementation by ratifying states. Several treaties among them enshrine provisions relating to religion and religious freedom, such as article 2.2 of the International Covenant on Economic, Social and Cultural Rights or articles 2.1, 14, and 30 of the Convention on the Rights of the Child. These provisions, however, remain quite marginal in their content, and limited in their scope[401]. A state of fact that leaves the Committee as the only guarantor of the right to freedom of conscience and belief, through article 18 of the ICCPR. In fact, religion is mentioned in various articles across the Covenant, such as "articles 2 (non-discrimination), article 4 (non-

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[400] Namely, the International Convention on the Elimination of All Forms of Racial Discrimination of 21 December 1965; the International Covenant on Civil and Political Rights of 16 December 1966; the International Covenant on Economic, Social and Cultural Rights of 16 December 1966; the Convention on the Elimination of All Forms of Discrimination against Women of 18 December 1979; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984; Convention on the Rights of the Child of 20 November 1989; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 18 December 1990; the International Convention for the Protection of All Persons from Enforced Disappearance 20 December 2006; and the Convention on the Rights of Persons with Disabilities of 13 December 2006.

[401] In this regard, particular attention is to be put on article 14 of the Convention on the Rights of the Child, which states that: "1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.
2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others".
As such, this provision states the complete regime of religious freedom provided for in other human treaties, albeit with a specific focus on children and their particular condition. However, the Committee on the Rights of the Child has not issued any Views discussing the content of the provision, in that all communications arguing a breach of article 14 were considered inadmissible. *See* Committee on the Rights of the Child (CRC), Views, 09/07/2021, *M. W. v. Germany*, communication n° 75/2019; CRC, Views, 04/02/2021, *A. B. v. Finland*, communication n° 51/2018; CRC, Decision, 15/05/2019, *X. v. Finland*, communication n° 6/2016; CRC, Decision, 11/11/2020, *J. J., O. L., A. J. and A. S. v. Finland*, communication n° 87/2019; CRC, Decision, 28/09/2020, *R. N. v. Finland*, communication n° 98/2019. Eventually, the CRC's elaborations on religion were scarce also in its General Comments, which were limited to the context of corporal punishment (General Comment n° 8) and indigenous peoples (General Comment n° 11).

derogation), article 18 (freedom of religion or belief), article 20 (prohibition of hate speech), article 24 (the rights of the child), article 26 (equal protection before the law) and article 27 (the rights of minorities)"[402]. Among these provisions, article 18 is the only provision which enshrines a right to freedom of thought, conscience and religion as such. It is the only provision which sets the regime of religious freedom within the context of the United Nations and the ICCPR[403].

For these reasons, the Committee becomes the only guarantor of religious freedom within the context of the United Nations. In order to complete this mission, the Committee is composed of 18 members "elected among state parties, who nominate their own nationals to serve as independent experts"[404]. As they are elected members, their background can be extremely different, although, in actual facts, "the majority [of the members] tend to have a legal background"[405].

This latter characteristic of the Committee members highlights the other key feature differentiating the Committee from the regional Courts. The Committee's members are independent experts, not judges; and the procedure to follow before the Committee, in the area of individual complaints for example, is distinct from that of a Court of law[406]. In other

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[402] ÅRSHEIM (H.), *Making Religion and Human Rights at the United Nations*, Berlin/Boston, Walter de Gruyter GmbH, 2018, pp. 107-108.

[403] Article 18 indeed states: "1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions".
As can be seen in its paragraph 4, the right of parents to ensure that the religious and moral education of their children be in conformity with their own convictions is enshrined in this very provision, similar to the American Convention on Human Rights, and contrary to the European Convention on Human Rights which enshrines it in a separate Protocol.

[404] ÅRSHEIM (H.), *Making Religion and Human Rights at the United Nations*, pp. 49-50.

[405] *Ibid*.

[406] Even the vocabulary employed for these proceedings are distinct, as the official nomenclature refers to individual complaints as 'individual communications' and the outcome of the Committee's assessment as 'Views'.

words, the Committee is not a judicial organ—it is a quasi-judicial organ, which entails consequences upon the moral authority of its Views. But despite that, it remains the unique organ in charge of monitoring the implementation of the ICCPR by ratifying states, and the unique organ which can examine individual complaints regarding breaches of the latter's provisions. Therefore, its Views—as much as its General Comments—reach a special degree of authoritativeness to command compliance by states. In the law, the Committee's Views are as equally binding as the judgements rendered by a regional Court, they simply do not enjoy the moral authority of the latter.

In matters of religion and religious freedom—that is, article 18 ICCPR—, the Committee issued developments in General Comment n° 22, and 92 Views consecutive to individual communications, the bulk of which concerns issues of conscientious objection to military services and expulsions towards the country of origin[407]. Such issues as the latter do not concern the exercise of religious freedom in society *stricto sensu*. They are emanations of religious freedom in very specific contexts, which do not question religious diversity as such. Hence they do not raise any specific issue relating to pluralism—which diminishes considerably the number of Views likely to shed light on the HRC's approach to the latter.

Yet, despite its scarcity, the Committee's jurisprudence tends to reveal a certain *modus operandi* that the latter follows when assessing the cases. First, indeed, the Committee shows a particular focus on the individual, the author of the individual communication (I). The HRC seems, therefore, to share the IACHR's premise when dwelling upon a claim. This premise, however, seems to be the unique feature shared by these two organs, as the Committee remains quite distant in its assessment of the cases (II). In other words, the Committees's approach to the right to freedom of thought, conscience and religion seems to revolve both around the individuals and their specific condition on the one hand, and the social

[407] This research has been carried through the jurisprudence database provided by the United Nations Office of the High Commission for Human Rights accessible at the following page: https://juris.ohchr.org/search/documents. The criteria selected for the research were "CCPR" and articles 18, 18.1, 18.2, 18.3, and 18.4. The research was conducted on the 05/10/2022, and yielded in a total of 92 Views. Using further filters, the database showed that, of the total number of Views, 25 concerned issues of conscientious objection to military services, 22 concerned matters of expulsion towards the country of origin, and 8 concerned extradition from the country of residence.

configuration of their society on the other hand. In terms of diversity inclusion, this approach leads to leaving the issues of diversity and pluralism to the realm of state sovereignty (III).

I. The Individual as Focus.

Adopting the individual as focus means to put the individual at the centre of the assessment. When adjudicating upon a case, such a stance leads to considering the facts and issues raised through the eye of the individual applicant or the author of the individual communication. In a similar fashion to the Inter-American Court of Human Rights, the jurisprudence of the Committee suggests that the latter adopts this stance when examining individual communications. The Committee's considerations on what 'religion' and 'religious realities' are (1) and the specific elements on which it emphasizes (2) point both to a specific stance.

1. 'Religion' and its manifestations.

In its General Comment n° 22, specifically dedicated to article 18 ICCPR, the Committee states that the right to freedom of thought, conscience and religion "is far-reaching and profound; it encompasses freedom of thought on all matters, personal conviction and the commitment to religion or belief, whether manifested individually or in community with others"[408]. Furthermore, the Committee insists on "the fact that the freedom of thought and the freedom of conscience are protected equally[—that is, jointly—]with the freedom of religion and belief"[409]. In that, the ICCPR adopts the approach of the European Convention on Human Rights, thus diverging from that of the American Convention of Human Rights which considers these two rights as separate and independent from one another[410].

After these statements on the scope of the freedom of thought, conscience and belief, the Committee adds: "Article 18 protects theistic, non-theistic and atheistic beliefs, as well as the

[408] HRC, General Comment n° 22, 30/07/1993, CCPR/C/21/Rev.1/Add.4, para. 1.

[409] *Ibid*.

[410] To state the two regional treaties discussed *supra*, the American Convention of Human Rights dedicates article 12 to freedom of conscience and belief, and enshrines freedom of thought and expression in article 13. Therefore, the American Convention couples-up the freedom of thought with its corresponding freedom of expression, as the mental and practical dimension of a same reality, rather than with religion, conscience and belief.

right not to profess any religion or belief"[411]. In other words, within the framework of the ICCPR, the "terms 'belief' and 'religion' are to be broadly construed (…)[,] not limited (…) to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions"[412]. In its substance, this definition is close to the ones adopted by the European and Inter-American Courts. In *Leirvåg and al. v. Norway*, the Committee explains indeed that "[t]he scope of article 18 covers not only protection of traditional religions, but also philosophies of life"[413].

Therefore, the definition of religions and beliefs protected under article 18 ICCPR comprises any religion that individuals choose to adopt and profess. It also comprises such minority religions which states can subject to limitations and discriminations, for lack of popularity or explicit public defiance. In short, the religions and beliefs protected under article 18 ICCPR range from traditional religions such as Abrahamic religions, Buddhism or Hinduism, to philosophies of life and New Religious Movements. For that purpose, the Committee added that it "views with concern any tendency to discriminate against any religion or belief for any reason, including the fact that they are newly established, or represent religious minorities that may be the subject of hostility on the part of a predominant religious community"[414].

From this perspective, there is a shift in the traditional way of appreciating the religious nature of some doctrines or worldviews, as much as the practices they entail. From this perspective, indeed, states and public authorities are no longer in a position of determining themselves whether any doctrine or worldview amounts to proper religion or a belief. Rather, it is the individuals themselves who determine whether said doctrines and world-views qualify as 'religions' or 'beliefs' in the meaning of article 18 ICCPR. In other words, the religious character of a set of doctrines is settled by the individuals themselves, the ones who choose to adopt them. In *Alger v. Australia*, when addressing the case of an individual who

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411 HRC, General Comment n° 22, para. 2.

412 *Ibid*. Also, HRC, Views, 13/07/2017, *Alger v. Australia*, communication n° 2237/2013, para. 6.5.

413 HRC, Views, 03/11/2004, *Leirvåg and al. v. Norway*, communication n° 1155/2003, para. 14.2. Also, HRC, *Alger v. Australia*, para. 6.5.

414 HRC, General Comment n° 22, para. 2.

was punished for refusing to vote[415], the Committee declared that "the contents of a religion or belief should be defined by the worshippers themselves"[416]. Consequently, this suggests that the Committee, when dwelling upon a religious claim—especially of a non-traditional religion—, would assess the religious nature of the claim from the point of view of the individuals themselves. It is even more so as, following the Committee's own words, "not all opinions or convictions constitute beliefs", which requires an individual case by case analysis[417].

As an example, in *Ross v. Canada*, the Committee considered the communication of a Canadian national who, besides his activity as a schoolteacher, made several public statements and wrote several books regarding quite controversial topics such as abortion, conflicts between Christianity and Judaism. Besides, his writings were made in "the defence of the Christian religion"[418]. After years of activity, the author was eventually sanctioned following a parental complaint accusing him of expressing "anti-Jewish views"[419]. The Committee, therefore, had to examine whether the measures undergone for the verbal statements made amounted to a breach of the author's rights. Concluding that the restriction did not breach article 19, guaranteeing freedom of expression[420], the Committee proceeds to examining article 18 and declares: "the actions taken against the author (…) aimed (…) at the manifestation of those beliefs within a particular context"[421]. In other words, the Committee considered the statements made by the author as proper manifestations of beliefs, in accordance with paragraph 2 of article 18 ICCPR. Given the similarity in the legal regimes applicable to the limitation of such manifestations and the limitations to the right to freedom of expression, the Committee resorted to its conclusions upon the latter as applicable to article

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[415] Voting was then mandatory, according to Australian laws and regulations. *See*, HRC, *Alger v. Australia*, especially para. 7.4.

[416] HRC, *Alger v. Australia*, para. 6.5. In this case, however, the Committee considered "the author has failed to submit convincing arguments to show that his wish not to vote at the 2010 federal election was based on a belief in the sense of article 18 of the Covenant". *See*, *ibid.*

[417] According to the Committee, indeed, "not all opinions or convictions constitute beliefs", they have to be proved and substantiated in the claim made before it. *See*, *ibid*.

[418] HRC, Views, 18/10/2000, *Ross v. Canada*, communication n° 736/1997, para. 2.1.

[419] *Ibid*., para. 2.3.

[420] *Ibid.*, paras. 11.5-11.6.

[421] *Ibid*., para. 11.8.

18 as well[422]. In other words, for limitations of expressions under article 19 ICCPR and limitations of manifestations of beliefs under article 18 ICCPR follow the same legal regime, the Committee referred to its findings under article 19 as also applicable to article 18 in the case. Consequently, it found neither of these articles had been breached.

In this example, the Committee considered verbal expressions to be manifestations of the author's beliefs. Consistent with its finding that "the contents of a religion or belief should be defined by the worshippers themselves"[423], the Committee seems to have embraced the author's view and considered his verbal statements as proper manifestations of his beliefs. These beliefs stemmed from the author's religion—Christianism. In other words, the Committee adopted the author's point of view when dwelling on the facts, and accordingly found the statements he made amounted, as he intended them himself, to manifestations of his Christian beliefs.

As these cases and the General Comment n° 22 suggest, the Committee tends to adopt the point of view of the authors of the communications when addressing the cases submitted to its examination. It tends to put itself in the place of the authors, at the time the facts of the case occurred. In other words, its interpretation of ICCPR provisions tends to be grounded in the individual authors of the communication as human persons. It tends to examine the individual communications from the stance of the individuals making the authors. A stance that takes into account the context of the case, the one which lead to the litigation.

2. Individuals and their context.

To adopt the author's point of view, in a human rights litigation, means to emphasize the author's individual freedom in the situation that gave rise to the litigation. The direct consequence of this stance is a contextualization of the assessment. For emphasizing individual freedom in a situation requires to contextualize the condition of its holder in the situation where they claim they suffered a breach of their right. In other words, to emphasize the individual freedom is to give more weight to its beholder than to their counterpart, in the

[422] *Ibid*.

[423] HRC, *Alger v. Australia*, para. 6.5.

concrete situation where these two clash. It is stressing more on the individual's capacity to act than the limitation that they undergo. For that reason, it is necessary to examine what the limitation intends, the reason for its enactment in the particular situation of the case. In fact, it amounts to contextualizing the assessment of the case, to mastering the contextual features surrounding the latter. Individualizing and contextualizing, therefore, appear to be complementary operations. And the Committee, from what its Views show, tends to follow this rationale when it examines the cases submitted to it.

For that reason, the Committee stated that restrictions to the right to freedom of thought, conscience and belief need to be applied and interpreted strictly. That is, in addition to pursuing the purposes prescribed in article 18.3 ICCPR, the limitations "must be directly related to and proportionate to the specific need on which they are predicated"[424]. They have to fit the concrete situation in which they are enacted, in addition to pursuing the aims stated in paragraph 3 of article 18 ICCPR. In addition to being directed at one of the aims listed in article 18.3 ICCPR, they ought to be adequate given the situation at hand. Even more so, as the Committee explains, "[t]hese limitations must be assessed in the light of the consequences which arise for the authors"[425], from their specific application.

Thus, the contextual features of the case are key for the Committee's assessment, for the Committee proceeds, when examining a state limitation measure, to determining whether the latter fits the context of the case, given the aim intended by the state. Somewhat similar to the proportionality test of the European Court of Human Rights, the difference in between the ECtHR's and the Committee's approach lies in the fact that the Committee seems to ground its reasoning in the precise context of the case when the ECtHR often resorts to more abstract elaborations[426].

In *Mann Singh v. France*, for example, the Committee had to examine the case of a member of the Sikh community who was denied the renewal of his passport for a regulation, adopted

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[424] HRC, Views, 26/07/2005, *Malakhovsky and Pikul v. Belarus*, communication n° 1207/2003, para. 7.3. *See*, also, HRC, General Comment n° 22, para. 3.

[425] HRC, *Malakhovsky and Pikul v. Belarus*, para. 7.4.

[426] *See supra*, Chapter 1.

by the French authorities, forbidding to appear head-covered on a passport picture[427]. In its Views, the Committee considers the regulation at stake amounts to a limitation of the author's rights under article 18 ICCPR, and acknowledges it was enacted in pursuance of public order and safety[428]. However, it observes "that the State party has not explained why the wearing of a Sikh turban covering the top of the head and a portion of the forehead, but leaving the rest of the face clearly visible, would make it more difficult to identify the author, who wears his turban at all times, than if he were to appear bareheaded"[429]. Even more so, the Committee declares that "the State party [has not] explained in specific terms how bareheaded identity photographs of people who always appear in public with their heads covered help to facilitate their identification in everyday life and to avert the risk of fraud or falsification of passports"[430].

In this case also, the Committee put itself in the position of the author of the communication and examined the litigation from his proper perspective. Individualizing its reasoning on the author, it took into account that Sikhs wear their turbans constantly, in all situations. And contextualizing its assessment, it found that, given they wear it constantly, to make it mandatory for them to appear bareheaded on passport pictures is inconsistent with the aim of achieving public order and public safety. In other words, given the contextual features of the case, acting in a way to achieve public order and public safety does not require to appear bareheaded on passport pictures. Hence the restriction undergone by the author breached his religious rights as guaranteed by article 18 ICCPR. In the Committee's words: it was "a disproportionate limitation that infringes the author's freedom of religion and constitutes a violation of article 18 of the Covenant"[431].

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[427] HRC, Views, 19/07/2013, *Mann Singh v. France*, communication n° 1928/2010, paras. 2.1-2.2.

[428] *Ibid*., paras. 9.3-9.4.

[429] *Ibid*., para. 9.4.

[430] *Ibid*. In fact, the Committee adds that "even if the obligation to remove the turban for the identity photograph might be described as a one-time requirement, it would potentially interfere with the author's freedom of religion on a continuing basis because he would always appear without his religious head covering in the identity photograph and could thus be compelled to remove his turban during identity checks". *See*, *ibid.*, para. 9.5.

[431] *Ibid*., para. 9.5.

As it appears from the examples discussed, the Committee's *modus operandi* when dwelling on cases submitted to it consists first and foremost of adopting the position of the author of the communication, and considering the immediate context surrounding it[432]. Said context, however, does not always circumscribe to the specific reality of the case. Sometimes, indeed, the context can be broader, and comprise characteristics of the proper society in which the author evolves. Consequently, the Committee may also find to take into account, within the contextual features of a case, the state of the society concerned. It tends, therefore, to grant a certain weight to the defending state when the issues of the case bring forth elements of such a kind.

II. A Distance From the Case.

Independently of their status of defending party in human rights litigations, states, and the authorities incarnating them, are in charge of the management of a society. As depositaries of the monopoly of legitimate violence and coercion, to use Weber's words, they are in charge of organizing a society, organizing the life of individuals within the latter, and the development of the social dynamics that the latter follows across the times. Therefore, given their mission of ensuring respect of individual fundamental rights, human rights treaty bodies often find to touch upon issues of social and societal importance.

Indeed, through their impact, the rights guaranteed by human rights treaties can have deep social ramifications. Depending on the provision or the context in which they ought to be applied, the organs in charge of their protection find themselves—inevitably—in a situation where any statement they make could amount to impacting the social configuration of a society. In this situation, they have to arbitrate in between reinforcing the individual right, endowing it with more substance and guarantee, and respecting other fundamental principles such as state sovereignty and the exclusivity of their jurisdiction, the corresponding subsidiarily principle, the free development of societies, and the legitimacy of elected authorities to manage social issues.

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[432] *See*, also, Views, 22/07/2011, *Singh v. France*, communication n° 1876/2009; HRC, Views, 01/11/2012, *Singh v. France*, communication n° 1852/2008; and HRC, Views, 05/11/2004, *Hudoyberganova v. Uzbekistan*, communication n° 931/2000 where the lack of contextual elaborations from the parties, especially the state, lead the Committee to conclude for a breach of the author's rights.

As explored *supra*, the subsidiarity principle is of an utmost importance for the European Court of Human Rights, except when consensus emerges from its state-parties, or in issues of a value importance. The Inter-American Court of Human Rights, by contrast, dwells more on the necessity for states to accompany the changes and evolutions of society, with a special emphasis on individual freedom and the free development of personality. As examined in the previous chapter, this stance leads it to consider and elaborate upon issues and matters that belong to states' domestic jurisdiction exclusively.

The Human Rights Committee, for its part, appears to be more distant from such issues. In some cases, it appeared quite unwilling to delve deeper into a claim due to its social implications. In fact, after individualizing and contextualizing the claims, the Committee seems to limit its assessment of the case to the substantiation of the claims by the parties (1). It seems to relinquish to delve in the actual legal issues at stake. In other words, the Committee does not elaborate on the entailments and requirements of a right; it rather examines how the parties substantiate their claims, how they justify them, how they approach the facts of the case. Then, according to the quality of said substantiation, it delivers its Views on the case as a whole. This *modus operandi* seems to be the main discriminant in between the activity of the Committee and both regional Courts explored. Unlike these two, the Committee lacks the legitimacy for elaborating and giving its own views on a right, thus leaving states with the duty to implement them domestically (2).

1. Distanciation from the facts and issues.

Taking distance from something is considering that thing from afar. When an observer observes a phenomenon or an object from afar, they do not explore the internal dynamics of the object observed—or, better said, they only consider those internal dynamics that manifest externally and so appear on the outside. In other words, taking distance from a phenomenon is to avoid getting at the heart of it. It is considering only its exterior reality, the visible part of it.

The distance taken by the Committee, when assessing cases, is similar. When distancing itself from the facts and issues of a case, the Committee only dwells on the apparent issues that surge from the litigation. It does not go beyond, and explore its ramifications at length as the discussed regional Courts do.

For that end, to conserve this analytical distance, the Committee endows its assessment with two main features. First, it only examines the parties' substantiation of their claims (A). That is, it examines the arguments provided by the parties and assesses how they fit into the legal regime set, according to the facts and context of the case. And second, it refrains from examining to any extent those issues of a social nature—that is, the issues materializing a choice of society (B).

A. Substantiating the acts in the case—the parties argumentation: One of the most pressing issues, in international human rights law developments of the recent years, is that of religious attire. The European Court of Human Rights, for example, has examined various cases concerning religious dressing, which yielded in seminal judgments of the Court's jurisprudence. Regulating what people wear seems indeed of importance to some states such as France and Turkey; their regulations pose multiple questions of individual freedom and individual rights, including from a religious freedom perspective.

Like the ECtHR, the HRC also had to face cases of such a kind, where authors were alleging a breach of their religious freedom due to state measures prohibiting them from wearing religious attires[433]. In *Sonia Yaker v. France*, for example, the author, which was wearing a niqab, was stopped for a security check, then prosecuted and convicted by the courts for wearing a dress that concealed her face in public[434]. Consequently, she was arguing a breach of article 18 ICCPR. The conviction was based on a law, adopted the 11 of October 2010 by the French Parliament[435] following a "broad democratic debate (…) bringing together elected

[433] *See*, *inter alia*, HRC, Views, 17/07/2018, *Sonia Yaker v. France*, communication n° 2747/2016; HRC, Views, 17/07/2018, *Seyma Türkan v. Turkey*, communication n° 2274/2013; HRC, Views, 17/07/2018, *Miriana Hebbadj v. France*, communication n° 2807/2016; HRC, Views, 01/11/2012, *Singh v. France*, communication n° 1852/2008; HRC, Views, 22/07/2011, *Singh v. France*, communication n° 1876/2009.

[434] HRC, *Sonia Yaker v. France*, paras. 2.1.-2.2.

[435] *Ibid*., para. 2.2.

representatives from across the political spectrum, and (…) many persons within civil society, including Muslims and non-Muslims"[436]. From the elaborations of the defending state in the case, it appears that the issue was, at the time, of a social importance within the French context for its intrinsic links with the debate of the time over French values and identity[437].

Therefore, the case put forward the same issues as the ones presented to the ECtHR in *S.A.S. v. France*[438]. As before the ECtHR, the defending state was also arguing that the measures applied to the author—that is, the law—meant at safeguarding the aim of "living together"[439]. Thus the issues for the Committee to face, examine and elaborate upon, were posed in identical terms as before the ECtHR in the previously discussed cases.

When delving into the case, the Committee starts recalling the content of the impugned law, thus concluding, given its effects on individuals, that it was a restriction to the author's right to wear religious dress as per article 18 ICCPR[440]. Then it proceeds to controlling whether the measure was "applied only for those purposes for which they were prescribed (…) directly related and proportionate to the specific need on which they are predicated"[441]. That is, the Committee proceeds to controlling whether the measure intended to pursue one of the aims listed in article 18.3 ICCPR, and was proportionate given the facts at hand.

When doing so, the Committee proceeds to contextualizing the claims and the whole issues of the case. However, it does not examine them *stricto sensu*; it only controls their substantiation by the parties. That is, the Committee does not lay its own views on the claims and issues, it does not make any elaboration or development on what the breached right entails in this precise case; rather, it examines whether the parties substantiated their claims enough, with regards to the applicable law in the matter. In other words, after recalling the legal principles applicable to the case, the Committee examines whether the elaborations of the parties—

[436] *Ibid*., para. 7.1.

[437] *Ibid*., paras. 7.1.-7.2.

[438] *See*, *supra*, ECtHR, Grand Chamber, Judgment, 01/07/2014, *S.A.S. v. France*, Application n° 43835/11.

[439] HRC, *Sonia Yaker v. France*, paras. 7.7., 8.9.-8.11.

[440] *Ibid*., paras. 8.2.-8.3.

[441] *Ibid*., para. 8.4.

especially the defending state—correspond to the legal regime set. In the case under examination, the Committee found that the defending state "failed to demonstrate how wearing the full-face veil in itself represents a threat to public safety or order"[442], that it "has not described any context, or provided any example [thereof]"[443], nor has it demonstrated that "the criminal ban on certain means of covering of the face in public (…) is proportionate to [the aim of preserving the 'living together'], or that it is the least restrictive means" to achieve it[444].

As this case reveals, the last step in the Committee's *modus operandi* is a distanciation from the concrete issues at the heart of the litigation, and their potential social implications. After narrowing the case to its concrete features, after contextualizing and individualizing the claims[445], the Committee seems to proceed to a double assessment. First, it determines whether the author's claim has been substantiated enough so as to be admissible and qualify as a potential violation. Then, it determines whether the justifications brought forth by the defending state show that the latter adequately applied the legal regime to the specific case at hand and its context. That is why the Committee uses such expressions as "the State party has failed to demonstrate…", "the State party has not explained…", or that an author's allegations "have been sufficiently substantiated for the purposes of admissibility"[446].

Such a stance, in a litigation, is further beneficial to the author of the claim. For, after a claim is considered admissible and putting forth a potential breach of the author's rights, it is then incumbent on the state to prove its measures fall within the legal regime set. Whenever the

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442 *Ibid*., para. 8.7.

443 *Ibid*.

444 *Ibid*., para. 8.11.

445 Remarkably nuanced, the Committee's Views and elaborations in *Sonia Yaker v. France* go as far as sorting the real implications of the general ban, and reveal a sort of 'hidden agenda' pursued by the law: "the State party [has not] provided any public safety justification or explanation for why covering the face for certain religious purposes — i.e., the niqab — is prohibited, while covering the face for numerous other purposes, including sporting, artistic, and other traditional and religious purposes, is allowed". *See*, *ibid.*, para. 8.7.

446 *See*, *inter alia*, *Sonia Yaker v. France*; *Seyma Türkan v. Turkey*; *Miriana Hebbadj v. France*; *Singh v. France*; *Singh v. France*; HRC, Views, 05/11/2004, *Hudoyberganova v. Uzbekistan*, communication n° 931/2000; HRC, Views, 21/10/2005, *Sister Immaculate Joseph and al. v. Sri Lanka*, communication n° 1249/2004; HRC, Views, 27/032018, *W. K. v. Canada*, communication n° 2292/2013; HRC, Views, 21/10/2014, *Viktor Leven v. Kazakhstan*, communication n° 2131/2012; HRC, Views, 26/10/2016, *J. D. v. Denmark*, communication n° 2204/2012.

arguments that the state provides therefore do not appear to have enough substance so as to fit the legal regime set, the Committee concludes to a breach of the author's right.

Proceeding this way, the Committee conserves distance with the issues at the heart of the cases submitted to it. It avoids making any statement or development regarding those issues with deep social ramifications, even when the claims, the facts the case, the arguments of the parties—and even the Committee members' separate opinions—seem to call for it.

B. Avoiding issues of a social nature: In such matters of social importance, the Committee appears, indeed, to deliberately avoid making any statement. The usual distance it seems to be taking from the facts of the case and the arguments of the parties appears to be even stronger when the issues raised prove to be of a social nature[447]. In *Prince v. South Africa*, for example, the author, Mr Gareth Anver Prince, was seeking to have his mandatory community service registered before the Law Society of Cape of Good Hope in order to be allowed to practice as an attorney at law[448]. Before that, he had completed all academic requirements[449]. But his application for registration was refused due to the fact that he was priorly convicted for possession and use of cannabis, which are listed as criminal offenses under the Drugs and Drugs Trafficking Act and the Medicines and Related Substances Control Act[450].

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[447] Regarding religious dressing, such as niqab and islamic headscarf as raised in the above mentioned cases—HRC, *Sonia Yaker v. France*; HRC, *Seyma Türkan v. Turkey*; HRC, *Miriana Hebbadj v. France*—it is a settled fact that the issues raised by the authors were of social relevance to the societies in which the litigations took their roots. From the end of the 2010 decade, France was subject to high and wide raging debates on identity, which encompassed religion, history, French values and traditions. At the heart of the debate, which was even lead in the parliamentary assemblies, was the place of Islam and its fitness, in terms of values and practices, within the French society as a whole. The issue of such wearings as niqab, burqa and any garment covering the face for religious reasons were directly linked to this identity issue and debate. That is why the Committee found, in *Sonia Yaker v. France*, that "the State party [had not] provided any public safety justification or explanation for why covering the face for certain religious purposes—i.e., the niqab—is prohibited, while covering the face for numerous other purposes, including sporting, artistic, and other traditional and religious purposes, is allowed" (*see*, *Sonia Yaker v. France*, paras. 7.1.-7.2.). In other words, that is why the Committee found that the restriction measures undergone by the author in *Sonia Yaker v. France* were targeted to such dresses as the author's, which were religious wearings covering the face. However, the issue of religious dress was officially and abundantly addressed by the Committee in various Views and General Comment n° 23 (*see*, footnote above). This seems to be the reason for which it ruled upon the case regardless of its social implications: its jurisprudence on the matter is already well established.

[448] HRC, Views, 31/10/2007, *Prince v. South Africa*, communication n° 1474/2006, para. 2.2. Similarly, *see* HRC, Inadmissibility Decision, 25/04/1994, *M. A. B., W. A. T., and J.-A. Y. T. v. Canada*, communication n° 570/1993.

[449] *Ibid*.

[450] *Ibid*., paras. 2.3.-2.4.

The author was a practicing Rastafarian, and he expressed his intent to continue using cannabis to comply with his religious duties[451]. Given the regulations to follow for the registration before the Law Society of Cape of Good Hope, he "was thus placed in a position where he must choose between his faith and his legal career"[452]. Therefore, facing his claims for religious freedom, the Committee had to settle the complex issue of a clash between religious freedom and society.

When giving its views, the Committee acknowledges that "the use of cannabis is inherent to the manifestation of the Rastafari religion"[453]. In this perspective, the law regulating access to cannabis was "a limitation to the author's freedom to manifest his religion"[454]. But despite being so, the Committee accepts "the State party's conclusion that the law in question was designed to protect public safety, order, health, morals or the fundamental rights and freedoms of others, based on the harmful effects of cannabis"[455]. Even more so, the Committee accepted the state's argument that "an exemption allowing a system of importation, transportation and distribution [of cannabis] to Rastafarians may constitute a threat to the public at large, were any of the cannabis enter into general circulation"[456]. The Committee accepts the arguments provided by the state as they are, without assessing them any further.

More precisely, in this case, the Committee was presented with a claim of a religious right—it recognized itself that the practice concerned was part of the right to religious freedom and was thus protected under article 18 ICCPR. In other words, the Committee had to rule over a claim bringing forth an individual right on the one hand, and specific dynamics of a society on the other hand. But instead of considering the issue from this angle, it merely accepted the arguments of the defending state without properly dwelling on them, discussing them, or analyzing the issue by itself. To describe this process in other terms, the Committee had to

[451] *Ibid.*, paras. 2.4.-2.5.

[452] *Ibid.*, para. 2.4.

[453] *Ibid*. para. 7.2.

[454] *Ibid*., para. 7.3.

[455] *Ibid.*

[456] *Ibid.*

arbitrate in between a recognized religious practice—consistent with article 18 ICCPR—and the established social order of a society. The author's claim, indeed, was shaking the established social order regarding drugs and prohibited substances, as existing within South Africa as a society. Be it religious, the practice of consuming such substances as cannabis clashed with the premises of the society in which it was taking place—namely, South Africa[457]. However, when dwelling on the issue, the Committee adopted the state's views on the matter and accepted its arguments without questioning them. It conserved its usual distance with the facts and issues of the cases—especially when the latter raise problems of a social nature—, thus concluding in favor of the defending state[458].

Likewise, in *V. D. A. v. Argentina*, the author, whose daughter became pregnant after being raped[459], was seeking for the latter to terminate the pregnancy. Despite Argentinian law allowing for abortions to be performed in cases such as the author's daughter[460], said abortion was refused to the author's daughter by the Argentinian courts[461]. It was only granted once the author appealed to the Supreme Court, almost a month and half after it was initially requested[462]. But, due to the progress of the pregnancy, which went beyond the 20th week, all

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[457] Consumption and use of cannabis, within the South African context, fell under the Drugs and Drugs Trafficking Act and the Medicines and Related Substances Control Act. That being said, these laws enact also exemptions for possession and consumption of such substances as cannabis: under specified conditions, it is granted to patients, medical practitioners, dentists, pharmacists, other professionals or anyone who acquired them in a lawful manner. *See*, *ibid*., para. 2.3. Use for religious purposes does not fall under the exemptions.

[458] By these Views, the Committee seems to show an evolution in its position regarding prohibited substances. In this case, the Committee took into account the fact that the consumption of the substances at stake were illegal and considered a deviant practice by society. In previous Views, namely HRC, Inadmissibility Decision, 25/04/1994, *M. A. B., W. A. T., and J.-A. Y. T. v. Canada*, communication n° 570/1993, the Committee was presented with a claim formulated by the Assembly of Church of the Universe. The beliefs embraced by the members of this Church entailed the use, cultivation, and worship of marijuana. *See*, *ibid.*, para. 2.1. Consequently, they suffered perquisition and confiscation of material. *See*, *ibid.*, para. 2.3. Upon these facts, the Church members went before the HRC, arguing a breach of article 18 ICCPR. When assessing the claim, the Committee declared that "a belief consisting primarily or exclusively in the worship and distribution of a narcotic drug cannot conceivably be brought within the scope of article 18 of the Covenant. *See*, *ibid.*, para. 4.2. In other words, before *Prince v. South Africa*, the Committee tended to refuse that the consumption of prohibited substances, including for religious reasons, be part of the right to freedom of religion and belief.

[459] HRC, Views, 29/03/2011, *V. D. A. v. Argentina*, communication n° 1608/2007, para. 2.2.

[460] *Ibid*., para. 2.3.

[461] *Ibid*., 2.4.-2.5.

[462] *Ibid*., para. 2.6.

medical centers addressed by the author refused to perform the termination procedure[463]. As a consequence, the author went for an illegal termination of the pregnancy[464].

The author, thus, addressed a complaint to the Committee alleging the breach of various rights, among which the right to freedom of religion and belief. On article 18, the author was arguing that the state, represented by its medical institutions in this case, had failed to respect the right to freedom of religion and belief"[465] as it wielded to the pressures and threats it had received from various parts[466]. More precisely, the author stated that violation of article 18 resulted from the "State['s] inaction in the face of pressure and threats from Catholic groups and the hospital doctors' [resort to] conscientious objection"[467] in order not to complete the procedure.

Therefore, the Committee was facing a case of abortion in relation with freedom of thought of religion, which is an issue of social relevance in Argentina and various parts of the world. It was facing a case through which it could settle the links in between abortion and international human rights law in general, especially in light of the right to freedom of thought and religion as guaranteed by article 18 ICCPR. However, instead of making any elaboration on the matter, the Committee declares that the author did not substantiate its claim enough regarding article 18 ICCPR, accepting the state's argument "that the activities of specific groups [that is, the organizations and institutions at the origin of the pressures] are unconnected to the actions of its officials [—that is, the medical staff—], and that the hospital's refusal to perform the procedure was guided by medical considerations"[468]. In other words, the Committee ignored the pressures and threats exerted on the medical institutions and their staff. It considered, instead, that their decisions were made on medical grounds exclusively, therefore rendering the author's claim inadmissible. In fact, even when assessing the case through article 2, 3, 7, and 17 of the Covenant, the Committee's assessment remained quite superficial, only limited

[463] *Ibid*., paras. 2.7-2.8.

[464] *Ibid*., para. 2.8.

[465] *Ibid*., para. 3.10.

[466] *Ibid.*, para. 2.9.

[467] *Ibid*., para. 8.7.

[468] *Ibid*.

to the 'contingent' facts of the case, instead of considering the core issues of rights that it raised[469].

As it appears from these two examples, the Committee seems to show more distance with the facts and issues of a case when the latter puts into light issues of social importance. The Committee's treatment of *Prince v. South Africa*[470] and *V. D. A. v. Argentina*[471] seems even to suggest a lesser standard in the control of the substantiation of the claims. That is, they seem to indicate that the Committee's standard of control over the arguments presented by the parties is minor in cases involving issues of a social nature. A control which tends to benefit the defending states—provided that the issue has not been already established in the law, such as, for example, that of religious dressing[472].

Eventually, this reluctance to engage into the issues of a social nature also stems from the Committee members' separate opinions. While, in its Views, the Committee conserves its distance with social issues, some Committee members tend to make statements encouraging it

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[469] *Ibid*., paras. 9.2.-9.4.

[470] *See*, especially, *Prince v. South Africa*, para. 7.3.

[471] *See*, especially, *V. D. A. v. Argentina*, paras. 8.7., 9.2.-9.3.

[472] The issue was indeed clearly settled in the law since HRC, General Comment n° 22. *See*, also, HRC, *Sonia Yaker v. France*; HRC, *Seyma Türkan v. Turkey*; HRC, *Miriana Hebbadj v. France*; HRC, Views, 19/07/2013, *Mann Singh v. France*, communication n° 1928/2010; HRC, Views, 22/07/2011, *Singh v. France*, communication n° 1876/2009; HRC, Views, 01/11/2012, *Singh v. France*, communication n° 1852/2008. When reading the Views relating to cases of religious dressing, a difference of treatment sparks the eye. When cases of religious attire also raise issues of social relevance, as HRC, *Sonia Yaker v. France* and HRC, *Seyma Türkan v. Turkey*, they do not often receive the same outcome. The discussed cases HRC, *Prince v. South Africa* and HRC, *V. D. A. v. Argentina* yielded in an absence of violation; whereas in HRC, *Sonia Yaker v. France* and HRC, *Seyma Türkan v. Turkey*, the Committee found the states had breached the authors' rights. This difference of outcome may be explained by the fact that the guarantee to wear religious dress is already well established in the Committee's jurisprudence, in both its Views and General Comment n° 22. That is, the assessment of all these cases still follows the Committee's classic *modus operandi* in the matter—individualization, contextualization, distanciation. The cases receive different conclusions based on whether there be any precedent regulating their core issues or not. The Committee tends to accept the state's arguments without further analysis when the issues do not appear to have been subject to prior Views or General Comment—that is, when they lack a precedent. When they do have a precedent, however, the Committee tends to conclude for breaches of the author's right, finding the state's argumentation insufficient.

to engage with them, to further develop and elaborate on the rights at stake—especially in the context of the litigation[473].

This distance taken from the facts and issues of the cases is in line with the specific characteristics of the Committee as an organ. As mentioned *supra*, the Committee is not a court of law—it does not have the same status, its work does not follow the same procedures, its members do not enjoy the same status as the judges of the ECtHR and the IACHR. Its position, as regulator and guarantor of the ICCPR rights, is different from that of the regional Courts discussed *supra*. In short, the Committee lacks the legitimacy to elaborate on ICCPR rights as the regional Courts do with the provisions of their reference treaty.

2. A legitimacy issue.

Along with its characteristics as an institution, the Committee faces several obstacles that prevent it from making lengthy and complex elaborations over the rights. The ICCPR counts with 173 state-parties and 6 signatories[474]. Only 18 states, across the world, did not implement any action regarding the treaty[475]. The first Optional Protocol, granting the right to individual complaints, counts with 117 state-parties and 3 signatories[476]. Hence the jurisdiction of the Committee spreads all over the world. It is extremely wide, it encompasses quite different states, different societies, distinct cultures with extremely diverse historical trajectories. In fact, in terms of diversity, the Committee's jurisdiction supersedes that of the regional Courts. It is widely more varied than the ECtHR's jurisdiction or the IACHR's jurisdiction, which already encompass a high degree of diversity.

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[473] *See*, *inter alia*, Individual opinion of Committee member José Manuel Santos Pais (dissenting) *in* HRC, *Miriana Hebbadj v. France*; Individual opinion of Committee member José Manuel Santos Pais (dissenting) *in* HRC, *Sonia Yaker v. France*; Individual opinion of Committee member Yadh Ben Achour (dissenting) *in* HRC, *Miriana Hebbadj v. France*; Individual opinion of Committee member Yadh Ben Achour (dissenting) *in* HRC, *Sonia Yaker v. France*; Individual opinion of Committee member Olivier de Frouville (concurring) *in* HRC, *Seyma Türkan v. Turkey*.

[474] According to the information made available by the United Nations Office of the High Commissioner for Human Rights, accessible at the following web page: https://indicators.ohchr.org/ [last accessed: 19/10/2022].

[475] *Ibid*.

[476] *Ibid*.

In this situation, the individual communications the Committee receives drive out of a variety of states, and stem from—sometimes very—distinct socio-cultural backgrounds. As a consequence, even if individualizing the claims and sticking to their particular context is one of the Committee's major concerns when examining individual communications, its capacity to make general statements over issues of a social nature remains limited. It remains restricted due to the distinctiveness of the socio-cultural dynamics of the societies in which its views would have to be implemented.

Cultural differences entail differences of world vision, differences in the perception of realities, and difference of conceptualization of realities. As explained *supra*[477], a culture is a particular set of mental patterns governing the relationship with the external reality. Being so, it is a construct of particular and long social dynamics—it is, in more simple words, a construct of History. For that being so, similar realities can be lived, perceived and expressed differently in one culture and another—for the issue depends on the mental patterns at work in their conceptualization. So is the language, as C. Lévi-Strauss explains, which provides the mental categories of intellection; so are matrimonial rules, the types of economic relationships, art, science, and religion…[478]. Regarding religion, for example, this difference of perception might be at the origin of the ontological partition between the Western world and the Asian world, whose term 'religion' refers to realities of a spiritual and philosophical nature according to the Western reading of the same term.

Any statement of a general nature, made by the Committee, has thus a special authority on all the state-parties to the ICCPR, all societies concerned and all the cultures animating their dynamics. When the Committee makes any statement regarding the substance of a right, states have to implement it domestically regardless of their particular social characteristics. From this perspective, the Committee does not appear to be in a position that allows it to make general statements on those social issues, given the latter require a domestic public debate. Indeed, at the heart of this incapacity to make any kind of *mandatum* on social issues lies an issue of democratic legitimacy. In simple words, world societies are still too diverse for any

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[477] *See*, Part I—Book I—Chapter 1—Section IV. Pluralism as Oligopoly.

[478] CUCHE (D.), *La Notion de Culture dans les Sciences Sociales*, pp. 48-49.

regulation of a social issue to be enacted, in case-law, for all of them indistinctly, be it authoritative or simply a recommendation in its nature. They still seem to lack the common ground upon which the Committee—especially in its present institutional configuration—could base any elaboration regarding such issues as abortion, consumption of prohibited substances, regulation of New Religious Movements, links and ties between religions (or churches) and the state… Even the limitation grounds enshrined in article 18.3 ICCPR appear to be conceptualized differently by the different national legal traditions[479]. From this perspective, it appears that the Committee is unable to engage into those issues bearing social ramifications, even if formally presented in an individual communication. Here lie the roots of the distance that it maintains with regards to the facts and issues of the cases. This distanciation seems to be motivated by its inability, as a committee, to supersede state authorities as manager of social issues—especially those involving religion.

In terms of pluralism, the Committee's *modus operandi* materializes a quite different model that the one embraced by the two regional Courts explored thus far. Its approach to religious freedom and diversity relies on distinct principles, follows different patterns, and yields in a different model of diversity management. In fact, it even sets different dynamics than the one impulsed by the two regional Courts. Unlike the ECtHR, which relies on the shared values of its state-parties; unlike the IACHR which encourages its state-parties to guarantee the free development of personality and free pursuance of life plan; the Committee seems to acutely respect the subsidiarity principle, thus leaving societies to evolve freely according to their own dynamics.

III. Pluralization rather than Pluralism.

Subsidiarity is one of the core principles of international law. It is one of the principles that erected modern international law—that is, since the advent of international human rights and International Organizations—, posing as the corollary of state sovereignty. Within the human rights field, the subsidiarity principle "holds that international human rights standards are best

[479] GUNATILLEKE (G.), « Criteria and Constraints: the Human Rights Committee's Test on Limiting the Freedom of Religion or Belief », *Religion and Human Rights*, 15, 2020, p. 24.

implemented at the lowest level of government that can effectuate those standards''[480]. However, even if states have the primary role in implementing and ensuring human rights within their jurisdiction, the subsidiarity principle also entails that their action is subject to control by the international bodies in charge of human rights. Indeed, "international human rights institutions have a complementary review power in cases where international minimal human rights standards are not protected effectively domestically"[481].

Consequently, when controlling or reviewing state actions in human rights matters, the primary duty of international human rights bodies is to maintain the correct balance in between state's freedom to act and its obligation to abide by their findings. In other words, human rights treaty bodies appear to constantly be in the search of the optimal equilibrium between state sovereignty and their mandate of enforcing—or enhancing further respect for—the provisions of their reference-treaty. This equilibrium expresses through the extent given to the subsidiarity principle. The larger the latter, the less the human rights body can elaborate on

[480] CARTER Jr. (W. L.), « Rethinking Subsidiarity in International Human Rights Adjudication », *Hamline Journal of Public Law & Policy*, 30, 2008, p. 319.

[481] BESSON (S.), « Subsidiarity in International Human Rights Law—What is Subsidiary about Human Rights? », *The American Journal of Jurisprudence*, Vol. 61, No. 1, 2016, p. 78.

a right. For example, the two regional Courts developed *supra* have each their proper extent in respecting the subsidiarity principle[482].

For the extreme diversity of its jurisdiction and its present institutional configuration, the Committee seems to be unable to challenge its state-parties on matters belonging to their exclusive jurisdiction. It, therefore, seems to abide by the principle of subsidiarity to its maximum; it endows the subsidiarity principle with its maximal scope, avoiding to engage with any issue that the texts did not expressly regulate.

From the perspective of individual rights, the Committee's endeavor to fortify and strengthen states' respect for human rights becomes thus slower than the dynamics set by the regional Courts. The Committee's impact is less direct, less profound, and more respectful of states'

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[482] The ECtHR's margin of appreciation doctrine is indeed the concrete application of the subsidiarity principle by the latter. That is, when the Court does not find any common regulation, approach, or values stemming from any of the latter in its state-parties regulation of an issue, it resorts to their national margin of appreciation and leaves them free to adopt any regulation they see fit. The margin of appreciation, in this approach, is the translation of the subsidiarity principle in the law of the European Convention on Human Rights. At the same time, it limits the scope of the principle to those issues regarding which the Court does not find any commonality linking its member-states. When the Court does find such commonalities, the subsidiarity principle does not apply any more—the margin of appreciation does not exist any more. As a consequence, within the realm of the ECtHR, the limits of the subsidiarity principle appear to be the common regulations, practices or the values which appear to be shared by state-parties to the Court. *See*, *inter alia*, ECtHR, Grand Chamber, Judgment, 26/04/2016, *İzzetin Dogan and Others v. Turkey*, Application n° 62649/10, paras. 112, 132; ECtHR, Grand Chamber, Judgment, 12/06/2014, *Fernandez Martinez v. Spain*, Application n° 56030/07, para 130; ECtHR, Grand Chamber, Judgment, 09/07/2013, *Sindicatul 'Păstorul Cel Bun' v. Rumania*, Application n° 2330/09, para. 13; ECtHR, Chamber, Judgment, 28/11/1984, *Rasmussen v. Denmark*, Application n° 8777/79, para. 40; ECtHR, Third Section, Judgment, 10/01/2017, *Osmanoğlu et Kocabaş v. Switzerland*, Application n° 29086/12, para. 89. In the Inter-American context, however, no such trace of subsidiarity can be found. When the IACHR rules on a case, it applies its usual mode of assessment and rules upon the issue at stake, whatever its nature. In doing so, it sets, in a clear fashion, the applicable law on the issue at stake within its jurisdiction, even if the said issue is of a social nature. Once its findings rendered, and the judgement or the advisory opinion issued, it seems to leave for states to make a choice between abiding by its conclusions or leaving its jurisdiction. It is a risk that the IACHR seems to be constantly taking. In 2013, for example, Venezuela left the jurisdiction of the IACHR. Consequently, the IACHR seems to ignore the subsidiarity principle, or only apply it in the narrow field of the supervision of the implementation of its findings within domestic jurisdictions. *See*, IACHR. Case of Artavia Murillo y Otros ("*Fecundación in Vitro*") v. Costa Rica. Merits, Reparations and Costs. Judgment of November 28, 2012; IACHR. Case of Atala Riffo and daughters v. Chile. Merits, Reparations and Costs. Judgment of February 24, 2012. Series C No. 239; IACHR. Case of the Yakye Axa Indigenous Community v. Paraguay. Merits, Reparations and Costs. Judgment of June 17, 2005. Series C No. 125; IACHR. Case of Loayza Tamayo v. Peru. Reparations and Costs. Judgment of November 27, 1998. Series C No. 42; IACHR. Gender identity, and equality and non-discrimination with regard to same-sex couples. State obligations in relation to change of name, gender identity, and rights deriving from a relationship between same-sex couples (interpretation and scope of Articles 1(1), 3, 7, 11(2), 13, 17, 18 and 24, in relation to Article 1, of the American Convention on Human Rights). Advisory Opinion OC-24/17 of November 24, 2017. Series A No. 24.

sovereignty than the regional Courts'[483]. And the critiques, from this angle, may be multiplied, as the Committee's Views lack publicity when public pressure is one of the main means for states to abide by them; they lack publicity when the latter is the main source of the Committee's impact in human rights issues, including within the domestic realms of states; the Committee's 'substantiation assessment' seems to be quite favorable to states; its 'distanciated' approach prevents the unification of human rights around the world when the Committee is presently the unique organ—due to its universality—which can achieve it[484]…

But nevertheless, despite the critiques it can receive, despite the limits due to its nature of international non-judicial treaty body, the Committee constantly enhances states to be pluralistic in their application of the treaty provisions—especially when it can formally rely on established legal principles. That is how, in the many cases dealing with religious attire for example, it found states limitation measures to be in contradiction with the treaty provisions, especially when it perceived the said religious dress was prohibited for political or socio-cultural reasons[485]. Indeed, the analysis of its jurisprudence reveals that the Committee pushes states to a pluralistic application of the international human right to freedom of thought, conscience and religion. It pushes states to adopt an inclusive stance towards religious

[483] In fact, regional Courts and the Committee do respect the sovereignty principle as it is one of the—if not the first—basic principles of international law. However, they do respect to a certain extent. And this variation, in terms fo the degree of respect, leads each organ to have a proper way to deal with it. The Committee seems to observe it strictly when the ECtHR seems to include it in the framework of the margin of appreciation, whereas the IACHR seems to adopt a logic of 'accept or leave the system' to engage with its dynamics.

[484] As the practice of the regional Courts tends to indicate, case-law and individual complaints seem to the most powerful means of legal harmonization between states. The impact of case-law, especially on populations, seem to be greater than other means, which focus on state reform. The Committee complements its examination of individual complaints by the Universal Periodic Review and monitoring for example. However, these means appear to be softer than case examination and assessment of individual complaints, and reinforce the distance in the stance adopted by the Committee.

[485] *See* the above cited and discussed HRC, Views, 17/07/2018, *Sonia Yaker v. France*, communication n° 2747/2016; HRC, Views, 17/07/2018, *Seyma Türkan v. Turkey*, communication n° 2274/2013; HRC, Views, 17/07/2018, *Miriana Hebbadj v. France*, communication n° 2807/2016; HRC, Views, 01/11/2012, *Singh v. France*, communication n° 1852/2008; HRC, Views, 22/07/2011, *Singh v. France*, communication n° 1876/2009.

diversity within their jurisdiction, in keeping with the United Nations' global mandate in the matter and the activity of the Special Rapporteur on religious freedom[486].

In other words, while the Committee is unable to tackle itself the social issues related to religious diversity, it nevertheless pushes states to adopt the most inclusive stance when facing and regulating the latter. So much so, instead of developing its own model for regulating religious pluralism, it seems to enhance states towards more pluralization in their treatment of religious diversity. Therefore, the impact of the Committee on this issue is that of a pluralization rather than a proper regulation of pluralism in the mode of the ECtHR's or the IACHR's. That is, instead of developing a model of pluralism *sui generis*, with its proper heuristics and underlying principles, the Committee leaves for states to enact any system they see fit for regulating religious diversity within their society, and then it pushes them to be as pluralistic as possible in the application of their said. In other words, the impact for the Committee takes place on the application of the domestic systems to the realities they face. To put is in simple words, the Committee pushes states to be as inclusive as possible. Contrasting with the regional Courts, which tell states how to act in the matter, the Committee tends to foster the inclusive stance towards diversity.

Thus, the Committee's approach to religious freedom, as it stems from its Views and General Comment n° 22 on Freedom of Thought, Conscience and Belief, can be summarized by the following triplet: individualization, contextualization, distanciation. Indeed, when dwelling upon a communication, the Committee individualizes the claim of the authors of the communication, taking into account their specific features as human persons. To these features regarding the authors specifically, the Committee adds those of the context of the case. That is, the facts and social characteristics of the context that gave rise to the communication. Proceeding so, the Committee comes to have a better grasp of the contention, of the concrete situation at the time in which the facts of the case happened. Then,

[486] Pluralism and inclusion are regularly stressed upon in the Reports of the United Nations Special Rapporteur on freedom of religion and belief: General Assembly (UNGA), Report, 13/04/2021, Countering Islamophobia/ anti-Muslim hatred to eliminate discrimination and intolerance based on religion or belief, A/HRC/46/30, para. 73; UNGA, Report, 13/04/2021, Interim report of the Special Rapporteur on freedom of religion or belief, Ahmed Shaheed. Elimination of all forms of religious intolerance, A/75/385, paras. 61, 74; UNGA, Report, 24/08/2020, Gender-based violence and discrimination in the name of religion or belief, A/HRC/43/48, paras. 74, 77; UNGA, Report, 20/09/2019, Elimination of all forms of religious intolerance, A/74/358, para. 75.

maintaining distance with the—legal and factual—issues which have not priorly received any regulation, it gives its Views on the communication. In other words, after individualizing the communication and contextualizing the claims, the Committee takes distance from any issue that requires it to make completely new findings—especially on matters of a social relevance to the societies under its jurisdiction. After the individualization, the contextualization, and the distanciation, the Committee finally concludes on the case and gives its views on the communication.

Sometimes, when a change made it possible, the Committee's positions were subject to evolution. In 1985, for example, the Committee declared that ICCPR "does not provide for the right to conscientious objection; neither article 18 nor article 19 of the Covenant (…) can be construed as implying that right"[487]. After General Comment n° 22 formally recognized conscientious objection, the Committee made it an "absolute" guarantee for states to enact and respect[488].

To avoid elaborating on human rights issues as the regional Courts do limits the impact of the Committee on the issues it faces, especially with regards to religious diversity. Even if its Views show a favorable stance towards more inclusiveness, the Committee does not lay any approach of its own to pluralism as such. Rather, its Views tend to enhance states to be more pluralistic—that is, to be more inclusive towards religious diversity, using their own systems of regulation. Its impact, therefore, is more on the pluralization of state treatment of religious diversity rather than on pluralism as such. As it has been developed along the last section, this approach proves to be quite different from that of the two regional Courts analyzed. But, nevertheless, all three approaches share one central feature: their domestic implementation faces limits proper to the framework they set.

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[487] HRC, Inadmissibility Decision, 09/07/1985, *L. T. K. v. Finland*, communication n° 185/1984, para. 5.2.

[488] HRC, Views, 15/07/2016, *Navruz Tahirovich Nasyrlayev v. Turkmenistan*, communication n° 2219/2012; HRC, Views, 15/07/2016, *Shadurdy Uchetov v. Turkmenistan*, communication n° 2226/2012; HRC, Views, 15/07/2016, *Akmurad Nujanov v. Turkmenistan*, communication n° 2225/2012; HRC, Views, 14/07/2016, *Akmurat Halbayewich Yegendurdyyew v. Turkmenistan*, communication n° 2227/2012; HRC, Views, 14/07/2016, *Matkarim Aminov v. Turkmenistan*, communication n° 2220/2012; HRC, Views, 14/07/2016, *Dovran Bahramovic Matyakubov v. Turkmenistan*, communication n° 2224/2012; HRC, Views, 15/10/2014, *Young-Kwan Kim et al. v. Republic of Korea*, communication n° 2179/2012; HRC, Views, 24/03/2011, *Min-Kyu Jeong and al. v. Republic of Korea*, communications n° 1642/2007 and 1741/2007; HRC, Views, 03/11/1999, *Westerman v. The Netherlands*, communication n° 682/1996.

Book II: Limits of Implementation.

When confronted to human behavior, which is a continuously mutating phenomenon, systems of regulation and policies of managing diversity often tend to show their limits. In fact, even the limits of the rationales inspiring them tend to surge. For being in constant movement and evolution, human behavior tends to progressively adjust and misadjust to the systems of regulation in force, thus calling for amendments and adaptation before the next evolution and its call for amendment and adaptation… This constant move between social dynamics and regulations, from law—and policy—to sociology, and back and forth is a central characteristic of government and social organization.

As it has been seen in the previous chapters, the systems of regulations developed at the international level to address religious diversity tend to differ on key aspects. As explained, these differences seem to emanate from the proper rationales adopted by each protection body, the proper contextual constraints the latter face, and the ideals that each of the concerned organs might have regarding diversity. All these elements tend to yield in specific regulations, each with their proper limits, which generally revolve around the place of the individual in society and the consequent span of his or her individual freedom. In other words, the intellectual dynamics presiding over religious pluralism, as developed by the international treaty bodies examined, seem to revolve around the place of society in regulation and the span of individual freedom that the said society is able to admit. Indeed, diversity seems to bring forth questionings regarding the extent to which a society can be diverse. It is the said extent that pluralism, as a normative system, seeks to materialize, either through law or policy. Thus, the core issue of pluralism and diversity is the span of individual freedom, meaning the degree of liberty to consent to those individuals who seek to depart from the social order in force, since this individual liberty is the (legal) tool that ultimately settles social diversity. Eventually, the normative system that emerges from the arbitration as to where the limit is to be placed tends to become the Pluralistic system in force. Therefore, depending on whether the emphasis is put on society (I) or on the individual (II), the resulting Pluralistic system takes a different shape.

I. Society and the ECtHR.

According to the developments made in case law, the ECtHR tends to put the emphasis on society in its arbitration between the latter and individual religious freedom[489]. The Court, indeed, puts the emphasis on public order, conceived as the order in force within the European society. An order that structures the interactions taking place between individuals, as much as those which take place between individuals and groups of individuals—communities for example—and the state. Hence its heuristics: the set of social values through which it considers the cases.

Such a focus yields in limiting individual freedom when the latter appears to come at odds with the said public order or the values that compose it. From an individual perspective, this approach tends to limit the exercise of religious freedom by preventing specific religious behaviors embraced at the individual level[490]. From a holistic perspective, it appears that individual behavior is only granted the protection of the Convention when it corresponds to the public order thus protected.

Moreover, from the holistic perspective appears that the legal contours of this public order tend to limit the evolution of religious diversity itself. That is so for the legal regime at stake tends to confine the evolution of religious diversity to those configurations that are in line with the values at the heart of the Court's approach[491]. As a consequence, any individual evolution, any novel spark of a religious nature yields in facing the limits established by the law.

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[489] *See supra*, Part I—Book I—Chapter 1—Section IV.

[490] Refer to Part I and, *inter alia*, ECtHR, Second Section, Decision, 15/02/2001, *Dahlab v. Switzerland*, Application n° 42393/98; ECtHR, Grand Chamber, Judgment, 13/02/2003, *Refah Partisi (Welfare Party) v. Turkey*, Application n°41340/98, 41342/98, 41343/98 and 41344/98; ECtHR, Grand Chamber, Judgment, 10/11/2005, *Leyla Şahin v. Turkey*, Application n° 44774/98; ECtHR, Second Section, Decision, 24/01/2006, *Şefika Köse and 93 Others v. Turkey*, Application n° 26625/02; ECtHR, Fifth Section, Judgment, 04/12/2008, *Dogru v. France*, Application n° 27058/05; ECtHR, Fifth Section, Judgment, 26/11/2015, *Ebrahimian v. France*, Application n° 64846/11; ECtHR, Third Section, 10/01/2017, *Osmanoğlu et Kocabaş v. Switzerland*, application n° 29086/12; ECtHR, Grand Chamber, Judgment, 19/12/2018, *Molla Sali v. Greece*, Application n° 20452/14.

[491] *See*, *supra*, the developments made on ECtHR, Third Section, Decision, 06/05/2014, *Alida Maria Fränklin-Beentjes and Ceflu-Luz Da Floresta v. the Netherlands*, Application n° 28167/07.

Thus, such a way of dealing with religious diversity yields in a limited inclusion of diversity. The span of the included diversity appears, in this framework, to be narrow to an extent that is at odds with the contemporary sociological dynamics of religious diversity and religious freedom within domestic societies. In this legal perspective, the included diversity is circumscribed; whereas, from a sociological prospective, it appears to be constantly augmenting. Thus, for marking a limit to the possible religious behavior and practices, the legal perspective appears as a limitation of individual freedom, and, more precisely, of religious freedom itself.

When the ECtHR opted for this model of regulation, which limits individual freedom in favor of a social public order, the IACHR seems to have opted for the opposite model. More precisely, when the ECtHR tends to focus on public order and social values, the IACHR seems to hold the individuals as exclusive focus.

II. Individuals and the IACHR.

Indeed, the approach followed by the IACHR seems to go opposite to that of the ECtHR. As developed *supra*, the Inter-American Court tends to grant the protection of article 12 of the American Convention to every sociological reality of a religious nature. In doing so, its impact on diversity is that of a continuously greater inclusion. But, at the same time, any consideration relating to public order—especially in the social dimension of the latter—tends to be excluded. In other words, while the IACHR's approach would result in including every novel spark of a religious nature, it concomitantly ignores the social order at the bases of the societies under its jurisdiction.

This ignorance of the social dynamics composing the said societies may amount to negative consequences on religious freedom, in the sense that the behaviors and practices to which the latter gives way might suffer impediments and treatments that hinder their expression. First, states can explicitly and specifically prohibit them, thus breaching individuals' religious freedom. States can be in a situation where they cannot provide for the religious claims thus made, or prove to be unable to conciliate their expression with the functioning of institutions and public services, or simply consider the said practices as harmful or dangerous. Second,

other members of society can react to their expression by adopting specific behaviors—for example through discrimination—that ultimately result in negating the religious freedom of the affected individuals. A consequence of a widespread and social nature, not exclusively tied to the state, which may nevertheless equally affect the propensity to proceed to religious practices and behaviors.

In both situations, the legal or the social backlashes[492] may amount to believers abstaining from religious practices and behaviors in spite of the provisions which guarantee religious freedom. The social order upon which societies rest, upon which they are build and through which public institutions develop their activity seems, indeed, to be paramount to the expression of religious behavior.

Thus, the types of regulations that exist, on the international level, in relation to religious diversity and pluralism seem to be structured along an axis made of individual freedom on one end and public order on the other. As was explained *supra*[493], the HRC of the United Nations opted for a kind of active stance rather a proper framework. Its Views tend to encourage states to be more pluralistic and inclusive of religious diversity, but do not show the way forward, expose the principles by which to regulate or enact any specific system to abide by. The Committee's impact, therefore, is to push domestic systems as they exist to be more pluralistic and more inclusive. Conversely, the ECtHR and the IACHR tend to develop a proper framework for regulating this diversity, following their own rationale and core principles. The former tends to put its focus on society, even to the detriment of individuals; the latter tends, by contrast, to privilege individual freedom over the social dynamics that may characterize any given society.

In a context of a continuous and increasing religious diversification, such an arbitration may be equally limiting for religious freedom. The limits of implementation that the exposed models face seem to be quite the same, especially in light of the fact that the construction of religious freedom, the consequences it entails for the social landscape, the claims to which it

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[492] *See infra*, Part II—Chapters 2 and 3.

[493] Part I—Book I—Chapter 3.

gives way, the way of living one's religiosity and the consequent practices and behaviors resulting from it seem to have reached a level of complexity that elevates the arbitration between individual freedom and public order to new dimensions. In other words, the shapes that religious freedom takes in contemporary societies appear to be new on a variety of dimensions. Consequently, they need to be settled and identified, from the sociological perspective, before any attempt to regulate them.

Part II: The Social Shapes of Religious Freedom.

As a social force, Religion has always been at the centre of social dynamics. From the incipient beginnings of human societies to present times, as the previous chapters abundantly show, it has been a constant and structural social factor. So powerful it is that it has overturned the 'secularization' thesis, which was the reference for social scholarship on religion[494].

Religion, both as asocial fact and individual practice, is deeply connected to society. If religions change and replace each other though the passing of time, religion itself seems to be a constant. The variables in the presence of religion in society have less to do with its presence as such than the way it is present in the latter. The way religion is present in society indeed changes and mutates with the passing of time—when one religion disappears, another one takes over. To the extinguishing—antique—Egyptian faiths succeeded Judaism; to the disappearing European pagan religions succeeded Christianity; to the eroding Babylonian religions succeeded Judaism, Christianity and later on Islam… The dynamics of religious presence and disappearance are complex, multi-faceted; they occur on the long time and are the fruits of long socio-political revolutions as much as a gradual mutation taking place at the individual level.

Individual religious experience is, indeed, far from being monolithic, as the relationship linking individuals with their beliefs can be extremely complex. In fact, it is both multi-level, in that it involves the individual, the community, and society at large; and multi-dimensional, for engaging the grass-root level—that of groups and individuals—, the institutional level, as much as the very dimension linking the two. That is why studying religion requires complex approaches bringing together multiple disciplines.

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494 P. Berger, for example, one of the leading scholars of religion and secularization, has even been as far as stating that the theory of secularization "false", adding that "[t]he world today (…) is as furiously religious as it ever was". *See*, BERGER (P. L.), *ed.*, *The Desecularization of the World. Resurgent Religion and World Politics*, Washington, D.C., Ethics and Public Policy Center, 1999, p. 2.

In relation to religious experience, new sociological observations have brought forth new dynamics, new patterns in contemporary religiosity. Guided by the global movement of individualization structuring contemporary societies, new ways of living religion at the individual level have appeared, and change the perceptive on religious experience as observed by past (Chapter 1). Coupled with with the dynamics of globalization, this mutation of the religious experience further results in a wide pluralization and a multidimensional diversification of society (Chapter 2), which poses as a challenge for states to manage and regulate (Chapter 3).

Chapter 1. Patterns of Post-Modern Religiosity[495].

As stated *supra*, the 'secularization' theory has been gradually abandoned by scholars as a reliable concept to describing reality when it comes to investigating religion in society. The reason of this abandonment was its failure to describe the subtle change in the religious presence. Indeed, the change was less of a disappearance of religion from society and individual minds—as the secularization theory postulated—than a mutation in the substance of the religious experience. That is, religion was not disappearing, religious beliefs were not abandoned by individuals; they rather turned into something more of a spiritual nature[496].

Therefore, less than 'religiosity' in the classic meaning of the term, today's manifestation of religion into society is rather of a spiritual nature. This 'spiritualization' of religion seems to have contributed to the emergence of a new phenomenon whereby individuals choose and compose their own beliefs and practices, on an individual basis, using very diverse substance materials to that end. Observed from distance, the phenomenon appears as a sort of religiosity *à la carte* that has reshaped the global religious landscape of contemporary societies. In other words, contemporary religiosity appears to be subject to a tripartite process: it is spiritual in nature (I), individualism is its driver (II), and an increasing diversification of the religious landscape its outcome (III).

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[495] This chapter was published as an independent article under the title of CHAIBI (M.), « Religion in Society: New Paradigm and New Challenges », *in* De PERINI (P.), *ed.*, De STEFANI (P.), *ed.*, *What's new in human rights doctoral research. A collection of critical literature reviews. Vol. V*, Padova, Padova University Press, 2023, pp. 121-139. Minor changes might appear between the chapter and the contribution due to the fat that the publication required minor changes and adjustments to publication standards.

[496] GIORDAN (G.), *ed*., SWATOS Jr. (W. H.), *ed.*, *Religion, Spirituality and Everyday Practice*, Springer Netherlands, 2012, 193 p. Of course, alternative conceptions and theories still exist. *See*, for instance, the theory of sacralization and the theory of 'glocalization' in BECKFORD (J. A.), *ed.*, DEMERATH III (N. J.), *ed.*, *The SAGE Handbook of the Sociology of Religion*, London, SAGE Publications, 2007, respectively pp. 66 and 98-113. *See*, also, TURINA (I.), « From Institution to Spirituality and Back: Or, Why We Should Be Cautious About the 'Spiritual Turn' in the Sociology of Religion », *in* GIORDAN (G.), *ed*., SWATOS Jr. (W. H.), *ed.*, *Religion, Spirituality and Everyday Practice*. In his contribution, the author expresses the need to approach religion and today's religious experience through two patterns: religious minorities, and the resulting power relations (between communities) at the social level. But despite these alternative theories, the scholarly debate over religion seems to have crystallized on the spiritualization of the religious experience, considered to be more faithful to contemporary religious experience as observed in sociology.

I. Spirituality as the new religiosity.

In the past centuries, especially before the Enlightenment that has set the first and perhaps the most powerful movement of distanciation from religion, religious beliefs were the utmost reference for everyone in society. The grasp of religions and clerics upon individuals' minds was powerful. The impact of their doctrines over them was quite high. And everyone was subject to them, from the highest layers of the societies to their bottom ones: the farmer and the Sovereign were both, from their distinct positions, equally accountable before transcendency.

This grasp started eroding progressively, though, under the Enlightenment's dynamic of "rationalisation" which came later to couple with Modernity's dynamics of "socialization" and "differentiation" that narrowed the "significance"[497] of religion in all aspects of social life.

More precisely, "rationalization", according to Russel Sandberg, is the process by which Reason has progressively taken the primacy as the source of fixing and defining the objects of believing[498]. It has therefore caused the "weakening plausibility of religious beliefs and (…) their replacement 'by considerations of objective performance and practical expedience'"[499]. In other words, it is the spread of Reason, throughout the social ambit, as the core engine for intellectual thought, which narrowed—in the first place—the scope of religion as a belief

[497] SANDBERG (R.), *Religion, Law and Society*, Cambridge, Cambridge University Press (Cambridge Studies in Law and Society), 2014, p. 63.

[498] *Ibid*.

[499] *Ibid.*

provider[500]. The later development of science and technology[501] only catalyzed this process, fertilizing the field for an increasing specialization of meaning, thus differentiating the social institutions providing meanings and the roles they fulfilled. All of which reduced even more the global social ambit of religion, both as a doctrine and an institution[502].

In addition, these two processes were taking place in a particular context of a growing national diversity that has a direct impact on them. First, the reference jurisdiction of social life has evolved from the deep localities to nation states. For "life has come to be lived less in the context of a close-knit community and more through the context of society as a whole"[503], any issue of a social relevance is dealt with at the wider level of the nation state. The immediate impact of this 'widening of jurisdiction' is that religious institutions, which have historically drawn their strength from the local communities, have been gradually losing their capacity to intervene in the latter[504]. In other words, by affecting the source of the belief itself and redefining the global context in which this redefinition takes place, a greater distance has taken way between religious institutions and society—thus narrowing the scope of the meanings they provide, and weakening their capacity to deliver them for the society.

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[500] Seen from this angle, the roots of the process go well beyond the advent and rise of technology, as Russel Sandberg argues in SANDBERG (R.), *Religion, Law and Society*, p. 68. With its focus on Reason as the sole legitimate source for human action, the Enlightenment was the first movement to set this rationalization on march. The movement was even the first agent to cause religion to lose its grip on society, to cause a heavy and public distanciation from religion and, above everything, the Church. For, indeed, before proceeding to any political act or enacting bills and laws depriving Churches and religious institutions from some of what they considered as their rights—such as to have a state status, to perceive state taxes, to be granted privileges of all sorts in the state system—, it is necessary to have a context for these acts to be carried out, for these bills and laws to be implemented and executed. More simply put: in order for something to be performed, it has first to be thought of as feasible. This seems precisely to be the effect that Enlightenment has had on religion and the Church. It affirmed, through its emphasis on Reason, the possibility—in fact the need—to take distance from religion, to refuse membership in any religion, and even to criticize religions, clergymen, religious concepts and institutions. It set the mental framework for this distanciation, and laid the philosophical principles for it to be achieved. Hence it seems to be, historically, the first step that started the decrease of the religious grasp on societies. In fact, it is even the first spark of the transformation of the religious presence in society, the process that has long been referred to as 'secularization'.

[501] SANDBERG (R.), *Religion, Law and Society*, p. 63.

[502] A process known as 'differentiation': the "process by which specialist institutions develop, which take on functions which were previously carried out by one institution. Rather than one specific institution discharging a plethora of functions, a plethora of institutions now discharge specific functions". *See ibid*., p. 64.

[503] *Ibid*., p. 66.

[504] *Ibid.*

Along with these social dynamics, there is also an individual stance that strengthens the distanciation. With today's growing migratory streams, believers have to adapt constantly to new social contexts that challenge their acquired beliefs and visions of the world, at the same time as religions have to adapt their concepts to better fit said contexts and their novelties.[505] As Giuseppe Giordan argues, in "a more globalized and pluralistic world, from the confrontation with other beliefs and other modalities of believing, the way for one to relate to one's proper beliefs and religious practice changes"[506] [unofficial translation]. The result being that beliefs and practices be constantly subject to discussion, re-discussion, redefinition, and the way to refer to the sacred constantly in movement[507]. In fact, it is the very link termed 'belief' that is in a constant movement of redefinition, and from both ends: that of the individual, who embraces the belief and participates to elaborating it, and that of the religious institutions that elaborate and communicate it[508].

All these macro-dynamics seem to have at least two observable consequences at the micro-level—that of the individual. First, narrowing the scope of religious beliefs and institutions drives with it resorting to other sources for constructing beliefs. The latter seem indeed to be a human necessity, if not a human fatality[509]. Therefore, it is not necessarily limited to religious

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[505] GIORDAN (G.), *ed.*, PACE (E.), *ed.*, *Religious Pluralism. Framing Religious Diversity in the Contemporary World*, Leiden, Brill, 2012, pp. 1-12, 15-29.

[506] GIORDAN (G.), « Dalla religione alla spiritualità: una nuova legittimazione del sacro? », *Quaderni di Sociologia*, Vol. 35 — 2004, para. 29.

[507] *Ibid*.

[508] *Ibid.*, para. 30. For a concrete example of a religion adapting to new ideas, *see* McBRIDE (D. C.), BAILEY (K. G. D.), LANDLESS (P. N.), BALTAZAR (A. M.), TRIM (D. B. G.), STELE (G.), « Health Beliefs, Behavior, Spiritual Growth, and Salvation in a Global Population of Seventh-day Adventists », *Review of Religious Research*, March 06, 2021, pp. 1-23, in which the authors study health practices in a population of Seventh-day Adventists that go beyond the traditional teachings of the Church. Also, accommodating itself to the social norms, the same religious denomination rejected polygamy. *See*, BECKFORD (J. A.), *ed.*, DEMERATH III (N. J.), *ed.*, *The SAGE Handbook of the Sociology of Religion*, London, SAGE Publications, 2007, p. 228. The same type of comment could be made about the Catholic Church's Vatican II council, the Reformist School in islamic jurisprudence…

[509] Leaving aside the psychological constructs and findings of neurosciences which explain that Reality is a set of facts that are perceived by individuals through their senses and cognition, before being interpreted by their intellectual categories, thus turning it, as a lived experience, into something more of an elaboration than an objective Reality; leaving aside the philosophical theories and contentions about Truth, from Arthur Schopenhauer's *The World as Will and Representation* to Jean Baudrillard's concept of hyperreality; leaving aside these considerations to focus exclusively on 'living' as an experience, it appears that knowledge, on both levels of Science and individual existence, is limited by human capacities, Reason, and rationality. Beyond what can be known and experienced, at the individual and the social dimensions, a field of unknown seems to persist. That field, that—scientific—knowledge has not yet reached, is subject to individual beliefs however they be elaborated. It is this wide meaning that the term 'belief' holds in this context.

beliefs; individually, for living in a society, having opinions on the latter and its dynamics, embracing principles of action and ethics, believing in the concepts that organize or should organize the society and the individual existence for the better seems to be a human necessity. To take as trivial an example as it could be, to have democracy as a political ideal stems from the belief that democratic regimes are better or do better in organizing the society. In other words, for such principles as peace, equality and freedom are believed to supersede those principles as security and ethnic purity, political regimes such as democracy are believed to be better regimes than despotism and theocracy—or rather the worst of all regimes, following W. Churchill's word, excepting all the others.

Henceforth, in order to build opinions, convictions, and beliefs, individuals tend to resort to a diverse set of sources, of which religion is only one. Science, for example, seems to be one of the utmost sources thereof. Consequently, what this means is that individuals take distance with religious beliefs and institutions, and most primarily with the rigid concepts that appear not to be completely *en phase* with scientific findings. Once again, it does not mean that individuals do not adhere to religious beliefs anymore or that they reject them, or even that the latter lose completely their significance for them[510]. It rather means that such religious beliefs are relocated to a more specific area, where they fulfill a more specific need[511].

In parallel, such relocation paves the way for composing the beliefs to embrace and the practices to fulfill them[512], all of which transforms the 'religious' beliefs into a *composite* of diverse beliefs composed from diverse sources and directed towards an individually diverse set of objectives grouped under the label of "self-realization"[513]. In other words, the beliefs come to be composed by the individuals on a sort of *ad hoc* basis, meaning on a basis that suits their individual characteristics. They seem thus to be gravitating around the individuals: they are elaborated by them for themselves, in order to pursue their utmost objective of self-

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[510] POSSAMAI (A.), *ed.*, *Handbook of Hyper-real Religions*, Leiden, Brill | Nijhoff, 2012, p. 91.

[511] It is in this sense that Russel Sandberg intends the loss of "significance" of religion. *See supra*; *see* SANDBERG (R.), *Religion, Law and Society*, p. 63.

[512] GIORDAN (G.), *ed.*, *Tra religione e spiritualità. Il rapporto con il sacro nell'epoca del pluralismo*, FrancoAngeli, Milano, 2006, pp. 81-82.

[513] BARKER (E.), *ed.*, *The Centrality of Religion in Social Life. Essays in Honor of James A. Beckford*, United Kingdom, Ashgate, 2008, p. 31.

realization (as they intend it themselves)[514]. Consequently, the link between the beliefs and the individuals embracing them also changes in its nature. It moves from being purely religious to something more of a spiritual nature. To be said shortly, the relocation of religious beliefs has growingly lead individuals, on an individual basis, to elaborate the beliefs and practices organizing their life, and the utmost objective of latter to go from Salvation to self-realization. That is why observation amounts to this change of nature in the link between the belief and the individual: the movement from strict religiosity to spirituality.

Spirituality and religion are two intertwined concepts. They share common features, some patterns, and convey, in many cases, the same imaginary. They may even sound identical for whoever does not delve into their deeper meanings, the reality they entail. The differences in between the two concepts are indeed those of nuances. But these nuances, once put forward, materialize the structural differences they embody at their very heart.

'Religion', despite the numerous definitions it was historically endowed with[515], bears in its heart a ritualistic dimension, a formalized set of beliefs, and even an institutional affiliation in some specific cases[516]. It seems indeed that all world religions share these features, despite the differences in their doctrines and practices. 'Spirituality', on the other hand, is rather related to "a search for meaning, for unity, for connectedness, for transcendence, and for the highest of human potential"[517]. It bears within itself an emotional dimension, connecting the beliefs and the believer as a being, that often translates into concrete practices.

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[514] As argued in BARKER (E.), *ed.*, *The Centrality of Religion in Social Life*, p. 31, modern individualism has intruded even the individual religiosity, causing its absorption by the "ultra-modern quest for self-realization (…) which has overrun common notions about the autonomy of the subject".

[515] *See supra*. For example, E. Durkheim defines it as a common system of beliefs and practices which unify all those who share them into a community. *See*, DURKHEIM (E.), *Les Formes Elémentaires de la Vie Religieuse. Le Système Totémique en Australie*, Paris, LGF — Livre de Poche, 1991, pp. 108-109. For O. Rudolf—a theologian—, it is rather the complex result to which yields the human disposition or inclination towards knowing the sacred. *See*, OTTO (R.), *Le Sacré. L'Elément Non-Rationnel dans l'Idée du Divin et sa Relation avec le Rationnel*, Paris, Payot, 1949, pp. 230-231. F. Nietzsche defines it as the representation of "another-world (behind, below, above)" which gives its meaning to the material world. *See*, NIETZSCHE (F.), *The Gay Science*, New York, Vintage Books, 1974, para. 151, p. 196. And eventually, W. James—a psychologist—defines it, in turn, as a set of feelings, acts, and experiences of individuals in relation to what they consider the divine. JAMES (W.), *The Varieties of Religious Experience*, Cambridge, Massachusetts, Harvard University Press, 1985, p. 34.

[516] SELVAM (S. G.), « Towards a Religious-Spirituality: A Multidimensional Matrix of Religion and Spirituality », *Journal for the Study of Religions and Ideologies*, vol. 12, Issue 36, Winter 2013, p. 133.

[517] *Ibid.*

In other words, spirituality is a tridimensional concept: it is, at the same time, the "exceeding meanings and senses produced by individuals in the socio-religious environment"[518] and the mental stance of commitment to the latter that translates into—more or less specific—practices in daily life. More precisely, it is the state of mind that commits to a belief system and translate it—or abides by it—in the acts of daily life. Being so, it can entail a ritualistic dimension as religions do, and the belief system by which it is structured can be more or less formalized as the belief systems and doctrines of a religious nature appear to be. The major difference with religion, though, lies in the absence of institutional affiliation, the non-systematic character of the rituals—if its practice can be conceived as such—, and the looseness[519] of the beliefs upon which it rests. In other words, whereas religion rests on an official doctrine elaborated by a religious structure putting forward rituals for believers to go by, spirituality rests on a set of beliefs elaborated by the individuals themselves and put in practice—if any—as they view it suitable themselves.

Spirituality, therefore, is less rigid than religion. It is characterized by the freedom of the individuals embracing it in elaborating independently their beliefs and the practices to follow[520]. It is detached from any organization or institution: the individuals who embrace it are its sole centers of gravity. They are both the ones who elaborate it and the ones who act upon it. Unlike religion, spirituality has the individual as its alpha and its omega.

'Spiritualization', etymologically, refers to a process of transformation into something of a spiritual nature. The term describes therefore the transformation of the religious experience—religiosity—into one of a spiritual nature. It is the phenomenon by which there is a shift in religiosity, which moves it towards a greater detachment from the settled religious institutions, their doctrines and dogmas and conceptualizations of the world. It is a movement

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[518] GIORDAN (G.), *ed*., SWATOS Jr. (W. H.), *ed.*, *Religion, Spirituality and Everyday Practice*, p. 24.

[519] The spiritual beliefs, as it has been described, are the elaboration of the individuals. They are relevant only for the individuals embracing them, that is, to put it simply, they do not pretend to set any holistic and absolute truths about existence, life, and death. Therefore they appear to be less rigid than the official doctrine of a religious institution or the dogmas and fundamental beliefs and principles upon which a religion rests, which are by definition universal, holistic and absolute.

[520] GIORDAN (G.), « The Body between Religion and Spirituality », *Social Compass*, 56(2), 2009, pp. 229, 231.

by which individuals cease to belong to exclusively one established religion, following exclusively its doctrine, to rather embrace beliefs and practices they elaborate themselves. Of course, said elaboration can be—largely or not, mainly or not, partially or sporadically—carried out using the settled or traditional religious doctrines such as those of the Catholic Apostolic Roman Church for example. In that case, however, said doctrines do not have a monopoly over the mind of the believer; the latter builds his or her beliefs using any doctrine that matches his or her beliefs, line of thought, life objectives. And, therefore, said elaboration can include any belief source—the doctrines of settled religious institutions, those of traditional religions, those of other sources such science, other types of religions, one's own lived experiences[521]… The beliefs elaborated are of a religious nature for the believer who embraces them, in that they fulfill the same roles as the beliefs and doctrines produced by the settled or traditional religions. Only the beliefs proceed from different sources and are composed of different materials that diversify their content at the very individual level.

One example that makes this abstract transformational process quite concrete may be that of yoga and meditation. Originally religious practices, amounting to Asian religions such as Buddhism and Hinduism, these practices have spread all over wold societies and cultures and been embraced by a wide variety of individuals[522]. Because spirituality, at the intellectual level, is a "modality of referring to the sacred that is legitimized no longer by obedience to the external authority of a religious institution, but rather the subject himself/herself, by the free expression of his/her creativity"[523], the very process at work seems to be that of enriching one's beliefs and visions of the world—be them of a religious nature—with other ideas and experiences—including those emanating from other religions.

In conclusion, the dynamics of the religious social change, the reconfiguration of religious institutions' social spaces, and the increase in Modernity's and Post-Modernity's dynamics

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[521] POSSAMAI (A.), *ed.*, *Handbook of Hyper-real Religions,* p. 91.

[522] GIORDAN (G.), « The Body between Religion and Spirituality », p. 233. The author argues that the practice of yoga has been developing even in such a context as a "catholic monopoly". Also *see* AMARASINGAM (A.), *ed.*, *Religion and the New Atheism. A Critical Appraisal*, Leiden, Brill, 2010, p. 98, where the author argues that even figures such as "Sam Harris—a hard liner, and one of the so-called four horsemen of the New Atheism—has come out in defense of the positive aspects and usefulness of meditation as well".

[523] GIORDAN (G.), « The Body between Religion and Spirituality », p. 231.

seem to have increasingly put the individuals in that stance of facing reality individually, and then set their choices for living it individually. As P. Berger states, "modernization is a movement from fate to choice, from a world of iron necessity to one of dizzying possibilities"[524]. This individualization of the individual relationship with religion and religious beliefs seems to have driven with it an individualization of the very belief systems, elaborated through a complex approach that allies ideas and intellection with the concrete daily experience and its emotional and bodily dimensions, thus yielding in a *religiosité à la carte*[525] in which the ultimate aim is no longer the Salvation of the being but its realization.

II. Religiosity *à la carte*.

As described *supra*, spirituality gravitates around the individual. The latter is its centre of gravity, its beginning and its end simultaneously, since individuals are able to choose the beliefs that make up their belief systems and then the practices in which the latter translate. As W. James states in his *Varieties of Religious Experience*, religion is the set of feelings, acts, and experiences of individuals in relation to what they consider the divine[526]. Spirituality is therefore the expression of individualism in relation to the religious experience. In that, it seems to be the expression of the same dynamic of individualization transcending contemporary societies when moving from their traditional to modern and post-modern settings[527].

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[524] BERGER (P. L.), *A Far Glory. The Quest for Faith in an Age of Credulity*, New York, The Free Press, 1992, p. 68.

[525] The expression is due to Danièle Hervieu-Léger in HERVIEU-LÉGER (D.), *La Religion pour Mémoire*, Paris, Les Editions du CERF, 1993, 273 p.

[526] JAMES (W.), *The Varieties of Religious Experience*, p. 34.

[527] Structured by Progress, Reason, Science, and then individuality, the processes leading to modernity and postmodernity yield to the emergence, as N. Aubert terms it, of an "individual free from any restriction" [unofficial translation]. A process that P. Berger describes as "a great liberation". *See* BERGER (P. L.), *A Far Glory*, p. 68; AUBERT (N.), « Un individu Paradoxal », *in* AUBERT (N), *L'individu Hypermoderne*, Eres, 2006, pp. 14-16; TAPIA (C.), « Modernité, Postmodernité, Hypermodernité », *Connexions*, 2012/1, No. 97, pp. 15-18.

Also, it seems to somewhat contradict E. Durkheim's assertion that the religious experience is essentially social and collective, whose purpose is to cause, maintain, or reshape the mental settings of the group[528] it ultimately unifies into a moral community named 'Church'[529].

The elaboration of the belief being individualized, the sources for building beliefs being sparse and diversified, the process of building one's own belief system appears, for the exterior observer, as a sort of personal composition. First, indeed, the redefinition of the social spaces eschewed to religious institutions, and the spread of religious ideas and knowledge of the most diversified religions around the world, has put all scientific knowledge and all the heritage of historical religious traditions "at the disposal of individuals, who come to use it through the logic of 'do for you' or that of the *bricolage*"[530] [unofficial translation]. All the process is therefore subject to the sensitivities of the individuals, to their intellectual and emotional affinities. In other words, they come to embrace whatever belief their cognition, sensation and intellection allows for, without further control than that of their consciousness —that is, "the rules considered to be appropriate by society"[531] [unofficial translation].

Some traditional religions have been subject, in recent History, to some adjustments due to the new cultural contexts in which they came to evolve. Buddhism, for instance, has been subject to a 'westernization' process when entering western societies[532]. The same can be said of Islam, which, as a decentralized religion[533], has seen a growth in its Reformist school of thought seeking the reinterpretation of the islamic sources in the light of the cultural and post-modern settings of the West. Within Christianity, there seems to be a growing tendency, especially since Vatican II council, of newly created christian churches that are set on living

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[528] DURKHEIM (E.), *Les Formes Elémentaires de la Vie Religieuse. Le Système Totémique en Australie*, Paris, LGF — Livre de Poche, 1991, pp. 52-53.

[529] *Ibid.*, pp. 108-109.

[530] GIORDAN (G.), *ed.*, *Tra religione e spiritualità*, pp. 81-82.

[531] *Ibid.*, pp. 81-82.

[532] POSSAMAI (A.), *Sociology of Religion for Generations X and Y*, London, Equinox, 2009, pp. 133-134.

[533] Indeed, at least in its Sunni branch, Islam does not have any equivalent for Christian churches. It is an *ortho-praxy* that relies on the individual application of principles and commandments as laid in the holy texts and interpreted by scholars.

the religion in a different and more suited way to the post-modern era, sometimes making adjustments to the existing Christian doctrines[534].

The important element with this evolution in traditional religions, as A. Possamai puts it, is the fact that it is nowadays the individual that chooses a tradition and adapts it to his or her personal needs rather than a religious institution that imposes itself on them[535]. To further illustrate this dynamic, roughly and briefly this time, with the Christian example, it can be said that the Church has evolved from trying Galileo Galilei to enacting the final acts of Vatican II that paved the way for new churches and individuals to compose and recompose by and for themselves some elements of doctrine and practice[536].

Another example of this global tendency, this time outside the sphere of traditional religions, is that of the hyperreal religions[537]. As defined by A. Possamai, a hyperreal religion is "a simulacrum of a religion created out of, or in symbiosis with, commodified popular culture which provides inspiration at a metaphorical level and/or is a source of belief for everyday life"[538]. In other words, hyperreal religions are religions whose belief systems are elaborated out of cultural popular products such as literature and cinema productions. For instance, two of the major cinematographic successes of the late XXth and early years of the XXIst century, The Matrix and Star Wars, serve as primary material for such religions. Their discourse about the essence of existence, their philosophical propositions, and the ideas they develop about 'living' as an experience became the bases for two newly emerged religions: Matrixism and

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534 POSSAMAI (A.), *Sociology of Religion for Generations X and Y*, pp. 148-150. The author qualifies these churches who seek to somewhat re-elaborate the existing doctrines as the 'Post-Evangelical Emergents': churches, says the author, "where both methodology and theology, form and content, have been adapted to today's concerns".

535 *Ibid.*, p. 134.

536 The tendency in itself appears to be taking place in all religions, and in the more varied sociocultural contexts: as K. Van Nieuwkerk argues, it also takes place within such a decentralized religion as Islam, in societies where religion is a strong social factor. In her study on unveiling Egyptian women, she argues that there is a tendency in veiled women population to develop an individual, personal notion of spirituality which leads them to conceive that the veil keeps a distance between themselves and God, father causing them to unveil—against societal judgement, against peer pressure, and against an official religious discourse. *See*, Van NIEUWKERK (K.), « 'Uncovering the self': Religious Doubts, Spirituality and Unveiling in Egypt », *Religions*, 12:20, 2021, p. 14.

537 POSSAMAI (A.), *ed.*, *Handbook of Hyper-real Religions*, Leiden, Brill | Nijhoff, 2012, 441 p.

538 *Ibid.*, p. 20.

Jediism[539]. And the same can be said of J. R. R. Tolkien's universe, which comprises and goes well beyond what may be his major success—*The Lord of the Rings*—, of Dan Brown's *The Da Vinci Code*, of J. K. Rowling's *Harry Potter*[540]…

Eventually, to take an example outside the religious sphere *stricto sensu*, the movement of New Atheism, which rejects all forms of religion whatever they be, is also an illustration of the spiritualization and individualization of belief. Despite rejecting all forms of religion, indeed, it nevertheless advocates for moral settings and ethical behavior, considering Science as the unique material from which to elaborate the latter[541]. Furthermore, it is also endowed with rituals and some practices of a spiritual or esoteric character[542]: its followers tend to celebrate Darwin day as christians celebrate Christmas[543], practice of mindfulness and meditation is highly recommended[544], etc. All of which materialize a certain way of living, deeply connected to a (scientific) belief system that translates into ethics, spiritual practices and moral behavior. Otherwise put, New Atheism, as a movement, looks like a scientific—anti-religious—spirituality[545].

All the tendencies described, from traditional religions to newly created ones, thus convey, and are structured by, a consistent system of ideas regarding life, death, the living experience and how to relate to all these in the practical meaning of the term. Only these systems of belief and practices they entail appear to be more individualized, and more of a spiritual nature. It has to be added also, as the above examples show, that neither of the individualization nor the spiritualization of beliefs do mean isolation of believers. That is, that each person constructs their belief system independently of any other does not preclude from

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[539] *Ibid.*, pp. 111-198, 165-184.

[540] POSSAMAI (A.), *ed.*, *Handbook of Hyper-real Religions*, 441 p.

[541] For example, *see* HARRIS (S.), *The Moral Landscape. How Science Can Determine Human Values*, New York, Free Press, 2010, 302 p.

[542] AMARASINGAM (A.), *ed.*, *Religion and the New Atheism. A Critical Appraisal*, pp. 90-91.

[543] *Ibid.*, p. 96.

[544] *Ibid.*, p. 98.

[545] When referring to the New Atheism "in his posthumously published book, Religion Without God, Ronald Dworkin argues that there should be a new category which he calls the 'religious atheists'". *See* AMARASINGAM (A.), *ed.*, *Religion and the New Atheism. A Critical Appraisal*, p. 2.

sharing it, or some of its aspects, with other individuals that amount to the same kind of constructs[546]. In fact, building one's own belief system does not prevent groups and communities from setting-up. The above examples tend to show quite the reverse, in that the spread of information and dialogue between people sharing some beliefs has been made more efficient by new technologies[547].

Despite the cultural, social, political and technological differences parting the world into very diverse societies, the tendency of spiritualization by individualization of beliefs seems to be a constant. In fact, the differences that could be observed, from this point of view, are differences of degrees, which depend on the state of the society considered. It seems, indeed, that the societies which are subject to modernity and post-modernity are the ones in which the spiritualization of religion is the highest[548]. In other words, the more post-modern a society is, the more spiritualized religiosity appears. The results being the multiplication of religions, of beliefs, of religious practices, of claims regarding the latter; the multiplication of New Religious Movements, of political issues regarding their organization and practices, of legal hurdles regarding their regulation and that of religious freedom. In short, the blanket image of societies evolves towards more diversity. Their religious landscape is more colorful.

III. The Religious *Mosaïque*.

As stated earlier, the flow of transportation and communication, which carries with it information and ideas, is continuously accelerating with the time passing. The world is more connected, more interconnected, and more reachable for both people and ideas. Henceforth, as much as individuals do, ideas and concepts and cultures and religions and ways of life travel

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[546] In the example of hyperreal religions, D. Kirby argues that "[t]he relationship between popular culture artefacts and idiosyncratic alternative religiosity is most emphatically not a unidirectional flow, but rather a field of engagement where audiences are also performers, viewers become authors, and the spirit seeker may simultaneously be an artistic creator. Thirdly, in some cases the mechanism of engagement with popular culture can be in itself a spiritual act''. In other words, at the same time as they share some beliefs, they contribute individually to each other with some elaborations of their own. A 'bricolage', as the author says, that strengthens and enriches their core beliefs, their belief systems, and the community ties linking them. *See*, POSSAMAI (A.), *ed.*, *Handbook of Hyper-real Religions*, p. 55.

[547] As shown in the case of Paganism and J. R. R. Tolkien's influence on the latter in POSSAMAI (A.), *ed.*, *Handbook of Hyper-real Religions*, p. 199.

[548] For that regard, *see*, for example, A. Possamai's developments on Christianity outside the western world, the streams structuring it and the impact it might have in the coming years, in POSSAMAI (A.), *Sociology of Religion for Generations X and Y*, pp. 151-152.

—in both ways. They are imported, meaning embraced by people living in the geographic areas where they did not exist or very little did; they are exported, either by migrating people or through the information ties linking the most diverse parts of the world[549].

Through the same canals as for ideas and cultures and ways of life, religions travel around the world and come to be increasingly present in the parts where they would have once been present on the margins only[550]. The presence of traditional religions—such as Islam, different branches of christianity, and Hinduism and Confucianism—in the parts of the world where they once did not exist or very little is increasing. The global religious landscape, within societies, sees its part of traditional religions augmenting with time.

In addition to this grow in traditional religions, new religious movements come to existence. As explained *supra*, the spiritualization of religious belief leads to an individualization of the religious experience but not to isolating the believers. Building a belief system by one's own, selecting its composing elements in terms of ideas and practices, does not mean or entail keeping it for one's inner self. All the contrary, studies tend to show that people share their belief systems, especially when the core driver of the latter is a product of popular culture[551]. This natural human tendency towards socialization ends up building communities of belief, of practices[552]; it ends up constructing groups of a spiritual—or religious thereof—nature. As a

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[549] LIOGIER (R.), « Identités globales et religion à l'ère digitale: vers les Global Identity Studies », *Social Compass*, 2020, Vol. 67(4), pp. 557-559, 562-563.

[550] In Latin America, the process is qualified as "religious pluralization from within" insofar as, according to the authors of the study, it is more detached from migration than in Europe and North America. *See*, MORELLO SJ (G.), ROMERO (C.), RABBIA (H.), DA COSTA (N.), « An enchanted modernity: Making sense of Latin America's religious landscape », *Critical Research on Religion*, Vol. 5(3), p. 318. The same pluralization is described in post-communist Prague in HAVLÍČEK (T.), KLINGOROVÁ (K.), « City with or without God? Features of post-secularism in religious landscape of post-communist Prague », *Social and Cultural Geography*, 19:6, 2017, pp. 806-808. In North America, Canada specifically, the same augmentation can be observed. *See*, BEAMAN (L. G.), « Religious Diversity in the Public Sphere: The Canadian case » *Religions*, 8, 2017, p. 260; BOUMA (G. D.), HALAFOFF (A.), « Australia's Changing Religious Profile—Rising Nones and Pentecostals, Declining British Protestants in Superdiversity: Views from the 2016 Census », *JASR*, 30.2, 2017, pp. 131-133 shows the evolution of the Australian religious landscape, throughout a century, which highlights an important rise in nones and other religions. In the case of the city of Melbourne, more precisely, BOUMA (G.), ARUNACHALAM (D.), GAMLEN (A.), HEALY (E.), « Religious Diversity through a super-diversity lens: National, sub-regional and socio-economic religious diversities in Melbourne », *Journal of Sociology*, 00(0), 2021, pp.1-19 describe a "diversity of diversities". For an input on Chinese society, *see*, YANG (F.), *Religion in China. Survival and Revival Under Communist Rule*, New York, Oxford University Press, 2012, pp. 93-95, 103-105.

[551] *See supra*; POSSAMAI (A.), *ed.*, *Handbook of Hyper-real Religions*, p. 55.

[552] The most basic example is, in today's western societies, that of yoga and meditation groups.

consequence, on the global social scale, all these religious movements, however small they be, appear as newly religious groups in augmentation[553].

In both cases, societies seem to go through an increase in the number of religious movements, whether they be traditional or newly formed. Today's societies appear to be all advancing towards more diversity, despite the differences in the religions and religious movements composing them and the degrees of diversification that results from that. In fact, they appear to be growingly colorful mosaïques, once painted in one single dominant color. The religious landscape of today's societies seems to be that of an evolving mosaïque of religious movements in constant evolution. They are thus subject to new dynamics that raise new issues for societies to face, such as that of pluralism.

In order to explore the issue of pluralism, it is necessary to first have a more in-depth exploration of individual religiosity as it is concretely lived. In other words, it is necessary to explore religious diversity from a sociological perspective, both from the internal and external dimensions of living, on both 'micro' and 'macro' levels. That is, on the one hand, it is necessary to explore the religious experience as lived by the individual believer and perceived by the external observer. Given both agents interact in the social realm, it may be necessary to explore equally the perspective of the one and the other—the one who behaves religiously and the one who is exposed to the said behavior. On the other hand, once these aspects of diversity —of the micro level of society—are determined, a global conceptualization of the latter can be operated, which describes the dynamics of diversity and pluralism on the social level.

[553] Although there seems to be a lack of census regarding these religious movements, said religious groups are often comprised in the 'Nones' and 'Other' categories. *See*, for example, the studies provided in the preceding footnotes.

Chapter 2. Society and Religious Diversity—the *Praxis*.

One of the first outcomes of the spiritualization by individualization is to put one in front of one's self. It causes individuals to determine their core characteristics, to settle their own basic choices for the life they intend. It enhances every individual to set a properly personal vision of the world. In other words, it is a progressive individuation of the individual—by which individuals individualize themselves through personal choices of life[554]. Following, as it has been exposed, individuals tend to build their own system of meaning, And, in order to do so, they tend to refer to a variety of intellectual landmarks that mobilize what they are as individuals: fundamental beliefs, their own patterns of thought, their ideals—in short, their personal values, which act as heuristics for considering the real and building a corresponding belief system (I).

But at the same time, being social animals, individuals are incessantly in search, with and within others, of similar traits to their own individual experience. In other words, inherently unsociable[555], human beings show a tendency towards determining on their own the meaning and direction of their destiny. On the other hand, intrinsically sociable[556], they constantly seek, within other fellow human beings, the common features likely to bring him closer to them and build bonds with them. That is how their unsociable sociability[557] leads, *in fine*, to forming groups and communities. That is how, on the religious dimension, New Religious Movements (NRMs), groups and congregations come to exist[558]. Being groupings of people

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554 As explained *supra*, the spiritualization of religiosity that takes place at the individual level tends to accompany the modernization that takes place at the social level, modernization being, as P. Berger terms it, "a movement from fate to choice, from a world of iron necessity to one of dizzying possibilities". *See*, BERGER (P. L.), *A Far Glory. The Quest for Faith in an Age of Credulity*, New York, The Free Press, 1992, p. 68.

555 DARWALL (S.), « The Sociable and the Unsociable », *Philosophical Topics,* Vol. 42, No. 1, 2014, pp. 203, 207-208.

556 *Ibid.*, pp. 203, 211.

557 *Ibid*., pp. 202-203.

558 In actual facts, religion, as any system of shared meaning, beliefs and ideas, has a powerful impact on forming communities—micro-societies. It, indeed, "finds expression in and shapes social relationships and processes that range from the micro-world of the individual to the macro-world of whole societies[—intended in the large as much as the narrow meaning of the term]. Religion is also social in that it both involves and influences the communication of meanings through ideas, images, rituals, emotions, texts, styles of self-presentation, gestures, music, song, dance and so on (…). Even when practised alone, religion is rooted in the social". *See*, BECKFORD (J. A.), *ed.*, DEMERATH III (N. J.), *ed.*, *The SAGE Handbook of the Sociology of Religion*, London, SAGE Publications, 2007, p. 2.

who share common principles, patterns and beliefs regarding reality and the way they have to behave therein, the groups they ultimately form amount to being small micro-societies existing within the global society. These micro-societies exist and crystallize according to the principles subject to consensus within their adherents, and can, therefore, be as varied as the principles erecting them. Consequently, when their core principles appear to challenge the social order established within a society, they may pose as a challenge for the latter (II).

Eventually, these dynamics of religious diversity do not circumscribe to religious movements only. They also concern other communities of an a-religious or anti-religious type. For its spiritual nature, characterized by an emotional component arising from a specific relationship to the material world and translating into specific behavior, the religious experience can also encompass sociological realities of an a- or anti-religious nature. It is the case, for example, of New Atheism, which, despite its fierce opposition to religion and transcendency, nevertheless manifests into society in a religious fashion (III).

Given the patterns of individualization and spiritualization of contemporary religiosity, exploring religious diversity starts with exploring how individuals construct their individual religiosity. Doing that requires to explore their heuristics, which means assessing, from a psychological point of view, the mechanisms at work in the mind that later manifest into behavior and practices. Understanding this dimension is important for grasping the sociological dynamics of religious freedom—it explains both its construction and perception. The construction takes place with the mediation of values, which serve in shaping how people understand and manifest religious realities on the one hand, and how they perceive them from the outside on the other hand. The two operations appear to be two faces of a same coin; or, rather, it is the same operation going in different directions but through the same medium. More precisely, ‘manifesting’ is an inside-out operation, going from the *forum internum* to the *forum externum* through the mediation of the heuristic model embraced. By contrast, ’perceiving’ is going from the outside reality to the realm of the mind with the mediation of the heuristic model that endow the external stimuli with the intellectual substance that the mind can grasp. Once these aspects determined, it is possible to sketch social models which explain diversity dynamics, relating to RF, at the social scale.

I. Religious Freedom in Postmodern religiosity—a sociological perspective.

The spiritualization of the religious experience tends to bring forth to the social realm different conceptualizations of the world. Accordingly, distinctions in viewing the world project into distinct social ideals, which bring in turn distinct needs and demands. In the social realm, these distinct needs may enter into a clash.

More precisely, in that they form part of one society, all religions are supposed to be equal—on equal footing—through the token of citizenship. For being part and parcel of the intellective schemes of equal citizens, they have an equal propensity to forge individuals' social ideals. Moreover, their claims to benefit from state's services enjoy an equal importance. Consequently, the fact that they bear different dynamics and social projects can cause alterity in between them. In fact, at the heart of the dynamics linking religion with society is the axiological dimension of their respective dialectics. On the one hand, indeed, religions have a natural tendency to participate to structuring society through their imprint on individual minds and behavior. *Mutatis mutandis*, on the other hand, society poses as a challenge for the full expression of religion, in that the latter can only manifest in society following what society makes it possible to manifest. In this line, religion's axiological systems come to confront society's axiological premises—conceived as the aggregate of the individual axiological systems guiding, structuring, conditioning individual human behavior within a definite social realm. Thus, the axiological dialectics taking place in between society and religion find their material incarnation in the person of the individual believer: the individual is the agent which has to compose with one and the other, the agent by whom the dialectics become visible[559].

[559] In P. Berger's words, it is a dual process of objectivation-internalization. *See*, BERGER (P. L.), *The Sacred Canopy*…, pp. 8-9, 15. In addition, if the believer is the primary individual concerned with these dialectics, the latter do not circumscribe to believers only. They also affect any person living in society, for the said persons are also exposed to the dynamics of society and the ideas that religions convey. In other words, non-believers are also exposed to these dialectics taking place at the axiological level in between society and religion, for they also obey axiological systems themselves, and hence forge their own systems in light of what society and religion have to offer.

This perspective highlights how important it is to explore religiosity from its two ends when it comes to determining the social shapes of religion within a definite social realm. In order to fully grasp the dynamics of religious diversity as they take place on the macro-realm of society, it is necessary to first resort to religion as an individual value system lived by the person who embraces it (1). Second, it may be necessary to explore how external observers perceive the resulting acts, practices, claims and behaviors. That is, it may be necessary to dwell on the perception of religious freedom by those—individuals and institutions—who do not adhere to the religiosity taking place before them (2). The involvement of the institutions, especially in regulating religious freedom, is indeed key for that purpose.

1. Religious diversity in (a) values (narrative).

As it has been explained in the previous chapters, 'religion' is a specific reality that social scientists have not been able to fully grasp and define. On the contrary, specific religions can be well known and identified; and have actually been studied by a wide variety social sciences and scientists across the centuries. These studies have put in light the multiple dimensions of religion, of which one of the most essential is their propensity to endow individuals with a specific value system guiding their intellection and behavior in reality (A). Nevertheless, that being said, religions are not the sole forces contributing to the interpretation of reality, nor are they the unique source of behavior in social life. Accordingly, the religious experience, especially at the individual level, may also be influenced by other ideas and principles in force in society such as cultural social values. This influence, in turn, may result in differences in the ways religion is lived in distinct social contexts (B).

A. Different religions, different value systems: According to international human rights law, the term religion "denotes views that attain a certain level of cogency, seriousness, cohesion and importance"[560]. While the definition appears to be broad and comprehensive, it refers essentially to the ontological dimension of religion. It considers the practical dimension of religion only implicitly, as an *ipso facto* projection of the intellectual stance towards reality

[560] ECtHR, Chamber, 25/02/1982, *Campbell and Cosans v. United Kingdom*, Applications n° 7511/76 and 7743/76, para. 36. *See*, also, the United Nations' Human Right Committee's elaborations *in* HRC, General Comment n° 22, CCPR/C/21/Rev.1/Add.4, 27/09/1993, para. 1.2.

that religion conveys. These 'views', or beliefs regarding the living experience, induce practices in the daily life which are in accordance with them. As explained *supra*, such fundamental beliefs as those of a religious nature automatically induce specific behaviors in daily life, an automation that is especially visible considering the spiritual turn in the religious experience. Being basic assumptions about reality, religious and spiritual beliefs lead to—and sometimes, such as with traditional religions, expressly mandate—specific behaviors for believers to perform[561]. This relationship in between thought and action seems, indeed, to be a constant in the realm of religiosity, especially in times of shift towards spirituality.

This being said, different religions rest on distinct basic beliefs and command accordingly distinct practices. For instance, the Abrahamic tradition endows Judaism, Christianity and Islam with a similar cosmological representation of the world. From this representation stem similar practices such as prayer and charity; a particular ontology regarding 'the Good' that implies a particular type of 'good' behavior; and a particular conception of Time as a linear process going from one point, the beginning, to another, the end. Nevertheless, they tend to differ on the basic representation of the human being, considered as inherently sinful in one tradition, and rather neutral, sinful or virtuous depending on his context of existence, in others. In addition, they differ even more, and on deeper issues, with the non-Abrahamic traditions such as Buddhism which considers the human existence as a line of suffering starting at birth and ending with death, or with Hinduism which tends to consider the existence as a continuous cycle of creation-prosperity-destruction incessantly repeating itself in distinct forms across the ages. All these basic considerations regarding the human existence tend to be the basic intellectual categories through which individuals embracing these religions consider the world around them[562]. They tend to be the intellectual categories through which they understand and engage with the dynamics that animate the world. They tend to make the believers' framework of thought and (consequently) action; the deepest

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[561] *See*, for instance, ROKEACH (M.), « Part I. Value Systems in Religion », *Review of Religious Research*, 1969, Vol. 11, No. 1, 1969, pp. 3-23. In this study, the author explores religion's impact on shaping a set of general moral values guiding specifically the way individuals relate to each other.

[562] Some of which translate into languages, editing regular terms with a specific meaning. As an example, *see* JOHNSON (K. A.), HILL (E. D.), COHEN (A. D.), « Integrating the Study of Culture and Religion: Toward a Psychology of Worldview », *Social and Personality Psychology Compass*, 5/3, 2011, pp. 144-145, where the authors describe how same words as 'life' or 'alive' appear to be conceptually different and encompass distinct realities.

intellectual material by which individuals manifest their existence. In short, they tend to be the basic values composing their psychology and thus guiding their daily behavior.

Indeed, besides providing general "guiding principles"[563] for life, religions provide their adepts with deep and essential beliefs. They endow them with ideas which touch upon the frontiers of the human existence, of human nature; they endow them with the most basic considerations that make it possible to interpret reality as the senses perceive it. In fact, even before crystallizing in "desirable, trans-situational goals, varying in importance and serving as guiding principles in people's lives"[564], religions endow their adepts with the intellectual categories without which the interaction with reality, at the intellectual level, would not be. In other words, religions endow their adepts with the basic intellectual substance on which the intellective activity of the mind can take place. They provide them with the primary intellectual material, often made of extra-materialistic ideas, which guides their understanding of reality and consequent behavior in daily life. As Voltaire stated, "thus all your reasonings [and] all your knowledge are based on images drawn in your brain: you do not notice it; but make a halt for a moment and think about it, and thus you will see that these images make the ground of all your most basic knowledge"[565] [unofficial translation].

Consequently, these fundamental ideas composing the human mind ultimately make a system of thought[566]. In other words, by the fact that they put the hallmarks of the intellective processes, religions tend to yield in proper systems of thought. Henceforth, they contribute to

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[563] Principles and goals that S. H. Schwartz terms 'values'. *See*, ROCCAS (S.), « Religion and Value Systems », *Journal of Social Issues*, Vol. 61, No. 4, 2005, pp. 750, 753.

[564] *Ibid.*, p. 748.

[565] HANEGRAAFF (W. J.), « Reconstructing 'Religion' from the Bottom Up », *Numen*, Vol. 63, No. 5/6, 2016, p. 577.

[566] Historically, religions have, indeed, been the roots of a high number of intellectual works. That is, authors as important as Saint Augustin, Thomas Aquinas, Al-Fārābī, Avicenna, Lao Tseu, Tchouang Xi, were all rooted in their religious or spiritual tradition when crafting their proper philosophical theories in an effort to deliver a concrete understanding of the world. That is, their thought—even the secular ideas they came-up with—was related to their religious belonging, as the religion they embraced was at the roots of the intellectual categories. That is how the prominent medieval philosopher Avicenna, for instance, came to shaping his 'floating man' as an experience to test the source of human consciousness—potentially, in his words, the soul. Also, religions gave way to entire branches of philosophy such as Christian, Confucian, or Islamic Philosophy. They even impregnated the thought of lay thinkers and philosophers, from Montaigne to A. Schopenhauer, from I. Kant to M. Onfray, as the latter's frame of mind has been shaped in a social context where Christian religions were in a situation of monopoly.

a distinct understandings of reality, and command, accordingly, distinct practices and behaviors to adopt which exceed the strictly ritualistic dimension and integrate the social life as such. For instance, Christian religions, Islam and Judaism tend to have a particular conception of the life and the human being that prohibits such practices as euthanasia. They also have a particular, essentially social, conception of family that yields in marriage. Hinduism, on the other hand, tends to have a more spiritual consideration of the latter, conceived as a proper *rite de passage*, when Buddhism does not endow it with any special status or conceive it as a mandate for buddhists, neither on the spiritual nor on the social dimension. Eventually, use of psychedelic substances appears to be strictly forbidden by Abrahamic religions whereas the practice is considered fundamental in shamanic religions.

Religious and spiritual practices, as much as the general behaviors they inspire, tend to be the visible projection of inner fundamental ideas that religions contain. In other words, these practices emanate from the ontological dimension of religions, being the practical translations of the fundamental ideas making them. To use yet more simple words, they are the practical manifestations, on the specific dimension they concern (marriage, charity, mindfulness…), of inner principles of an ontological nature. Given these ontological principles serve as intellectual premises to practical behavior, they become the patterns of the behavioral model they translate into. In other words, these ontological properly become a set of values guiding the understanding of the world and the behavior therein. In that religions embody these values into comprehensive and consistent intellectual systems, religions are, from an axiological perspective, value systems as such.

In social scholarship, studies on values and religion have been conducted quite continuously, especially from a sociological standpoint[567]. However, the studies conducted do not seem to explore religions as value systems internalized by individuals. They do not consider the impact of their axiology on individuals—that is, they do not explore the concrete impact, on individual behavior, of the axiological system that a specific religion fosters within the

[567] *See*, *inter alia*, ROCCAS (S.), « Religion and Value Systems », *Journal of Social Issues*, Vol. 61, No. 4, 2005, pp. 747-759; ROKEACH (M.), « Part I. Value Systems in Religion », *Review of Religious Research*, 1969, Vol. 11, No. 1, 1969, especially p. 22; TATE (E. D.), MILLER (G. R.), « Differences in Value Systems of Persons with Varying Religious Orientations », *Journal for the Scientific Study of Religion*, Vol. 10, No. 4, 1971, pp. 357-365. Whatever the framework applied, religions tend to impact the behavior on believers, orienting them towards specific principles of behavior.

individuals who embrace it. Nor do they tend to contribute to explaining their final impact, as observable in individual behavior in daily life. Rather, they seem to focus on the impact of religions on specific dimensions related to the stance that individuals adopt towards—and in their—general social life. They lack in considering the precise system of thought deployed by an individual in social life, in application of a specific belief system adopted *a priori*. In that, social scholarship does not seem to explore religions as value systems as such. To say it in more distinct words: social scholarship does not seem to explore religion as a philosophy of life—as it manifests in "everyday life"[568].

One of the reasons that might explain the lack of such studies is the "lack of reliable empirical methods allowing to measure the values"[569] [unofficial translation]. The sources from which individuals draw the values composing their own value systems tend to be quite varied. Within an individual, values are subject to a series of dialectics bringing together as different value sources as religion, culture, science, tradition… The values embraced by an individual tend to proceed from different sources. It is their *assemblage* altogether into one system that *in fine* composes the value system by which an individual abides. The individual value system thus formed tends to orient the way a religion manifests through behavior and practice; it tends, for example, to orient the way a same religion is lived in distinct social contexts.

B. Value systems and modes of living: Religions, indeed, are not the only sources of values that exist in society. First, individuals, in all societies across the world, count with a variety of religions surrounding them. Contemporary globalized societies tend to expose individuals to various religions, cosmovisions and worldviews, each of which offer a particular viewpoint on reality and the living experience. Second, the postmodern settings of contemporary societies provide individuals, especially in times of democratization of scientific and academic knowledge, with a variety of other sources from which to build their most basic

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[568] AMMERMAN (N. T.), « Finding Religion in Everyday Life », *Sociology of Religion*, 75:2, 2014, pp. 196-201. By the year 2016, the author identified that lived religion has been a subject of analysis in as much as 64 pieces of academic literature across a wide variety of social sciences which includes "history (15) and sociology (21), with practical theology (5) and religious studies (11)". *See*, AMMERMAN (N. T.), « Lived Religion as an Emerging Field: as Assessment of its Contours and Frontiers », *Nordic Journal of Religion and Society*, Volume 29, no 2, 2016, p. 86.

[569] SCHWARTZ (S. H.), « Les Valeurs de Base de la Personne : Théorie, Mesures et Applications », *Revue Française de Sociologie*, 2006/4, Vol. 47, p. 929.

inner beliefs. As exposed in the previous chapter, this intellectual context impulses a movement that tends to relocate religious beliefs to the narrow sphere of the 'unknown'. Thus, individuals remain free to choose which sources of belief to resort to, and which ideas —religious or other—compose their most inner and basic beliefs. That is, the choice of opting for which intellectual material to constitute their heuristics on the objective reality is the individuals' to make individually. Consequently, following an *assemblage* of different beliefs drawn from various sources, individuals tend to compose their own heuristics on reality and behave therein as they see fit[570]. In other words, individuals tend to make individually the meaning system allowing them to intellectually grasp reality and behave therein. This process, that takes place into the mind, may be the psychological dynamic behind the process of spiritualization of the religious experience. As religiosity, driven by individualization, shifts towards spirituality, it appears to leave individuals with the task to settle themselves the most basic beliefs upon which they lead their living experience. Considered solely from a psychological behavioral perspective, the new religiosity seems to be an axiological construction, a process of *assemblage* by which individuals build the intellectual framework that presides over their interactions with reality and behavior therein.

Alongside religion, one of the most powerful provider of values is culture. Being the set of mental patterns embraced by a group of individuals[571], culture is also, accordingly, a powerful provider of values. In fact, the mental patterns making a specific culture can also be viewed as those individual values that happen to be shared by a community of individuals. Moreover, once constituted, cultures proves to also have an impact on the individuals who embrace it. In fact, embracing a culture, or any part of the latter, is embracing the specific mental patterns that make it, which means embracing the core beliefs and the values on which it is erected. From the standpoint of values and axiology, embracing a culture proves to be the same intellectual operation as embracing a religion: the values they provide both have an impact on individuals' understanding of reality, individuals' conceptualization of the world, and their behavior in the latter. Therefore, culture also impacts the way individuals construct their

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[570] On individual heuristics and confronting the objective reality, *see*, TERELAK (J. F.), « Psychology and Religion. Remarks from a Methodological Perspective », *ScientiaetFides*, 9(1), 2021, p. 362.

[571] *See supra*, Part I—Book I—Chapter I—IV—1—B. Developing a European Culture, and C. Protecting a European Society.

religiosity and consequently manifest the latter in daily life. As S. Roccas argues, Ronald "Inglehart found that the religion dominant in each society is related to the types of values considered to be most important in it"[572]. In other words, the form that religion takes tends to depend, at least to a certain extent, on the values in force within a society. Culture and religion are in a constant dialectical competition for providing the beliefs on which individuals rest, on which societies base their premises. As an illustration, R. Ingelheart adds that his study showed that "Protestant European countries attributed very high importance both to self-expression and to secular-rational values, while Catholic European countries attributed only moderate importance to both types of values"[573], thus conforming the deeply intimate links that culture and religion maintain.

Therefore, when considered in a continuum going from ideas to values to practices and social behavior, religiosity amounts to defining a certain way of living. That is, a way of behaving that refers to the "everyday thinking and doing of [religious and spiritual] men and women"[574]. In that, living a religion or a spirituality is materializing a proper mode of living within a definite social context. In other words, it is adopting "activities, practices, values and habitual and repetitive relationships linked to everyday life"[575] [unofficial translation]. Being so, religiosity is deeply connected to the socio-cultural structures of a society. It is subject to the influence of the variety of factors that structure it, among which those conceptions conveyed by culture. In fact, this dynamic is at the centre of the spiritualization of religiosity: the movement of spiritualization is driven by a high degree of individualization, which is one of the core forces of postmodernity; and its means—the *bricolage*—appears to be the translation of consumer culture practices into the language of sociology of religion[576]. Religiosity's global dynamics, as they tend to take place in the recent decades, are thus

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[572] ROCCAS (S.), « Religion and Value Systems », pp. 753-754.

[573] *Ibid.*

[574] AMMERMAN (N. T.), « Lived Religion as an Emerging Field… », p. 85.

[575] BÁRTOVÁ (Z.), « L'authenticité comme valeur centrale de l'engagement religieux dans la culture de consommation: le cas des pratiquants bouddhistes en France et en République tchèque », *Studies in Religion/ Sciences Religieuses*, 2021, Vol. 50(1), pp. 144. The original wording, in French language, reads as follows: "Pour les sociologues, le style de vie implique des activités, des pratiques, des valeurs et des relations habituelles et répétitives, liées à la vie quotidienne". Further in this perspective, the author contends that such a mode of living is closely related to individual identity, which is elaborated on a daily basis. *See*, *ibid.*

[576] *Ibid.*

directly related to the change of culture in contemporary societies. The way religion is lived, the way spirituality is developed thus also depends on the basic ideas, beliefs and values in force within a specific socio-cultural context. The changes in the global culture amends the religious beliefs adopted, orients their understanding towards new directions—or nuances them—, and changes the way beliefs are manifested by those who embrace them.

This process tends to take place at the individual level first, as individuals are the first agents involved in the process. Individuals, indeed, are those who first embrace ideas, beliefs, and adopt values for their general behavior. When their individual behavior comes to be shared by a variety of individuals composing a society, the values that inspire their behavior may have accessed the social realm and hence become social values as such.

Historically, various religions have shown this movement of adaptation to new socio-cultural settings, especially when their presence therein was new. Buddhism, for instance, has been subject to an evolution towards western cultural traits when integrating European and American[577], and also Australian societies[578]. Engaging with these cultures, indeed, lead Buddhism to evolve on several elements, among which the "emphasis on lay practice, equality for women, application of democratic principles, emphasis on ethics, secularisation (this includes emphasis on the rational nature of Buddhism and its congruence with Western science), and linkage to psychological concepts"[579]. The evolution is so visible that it can even serve as a mirror identifying the hidden dynamics within the cultures concerned. For example, M. Bauman explains that "Germany [for example] has interpreted and presented Buddhism in a way that conforms with German values; [and thus] he concludes that the Buddhism that has developed in Germany says more about German cultural values and attitudes than about Buddhism itself"[580]. Similarly, when it integrated the Australian society,

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[577] SPULER (M.), « Characteristics of Buddhism in Australia », *Journal of Contemporary Religion*, Vol. 15, No. 1, 2000, p. 29.

[578] ROCHA (C.), *ed.*, BARKER (M.), *ed.*, *Buddhism in Australia. Traditions in change*, New York, Routledge, 2011, 170 p.

[579] SPULER (M.), « Characteristics of Buddhism in Australia », p. 38.

[580] *Ibid*.

the same tendency appeared with an evolution towards secularization[581], towards a democratic internal organization[582], and a stronger involvement of women[583].

Likewise, Islam, whose presence in European societies has been a growing phenomenon for decades, has seen its prescriptions adapt to the new social settings in which it came to manifest. Several studies tend to highlight how Muslims, descendants of immigrants, tend to depart from their parent's cultural traditions and develop new practices which are more in line with both their religious convictions and cultural environment[584].

Eventually, on a more historical standpoint, the Christianization of Latin America that accompanied its colonization rested on christianizing the local customs and traditions. In fact, "Catholicism in the New World was often adapted [by the missionaries] to the worldviews of indigenous peoples"[585] in order for them to better carry their mission. That is, missionaries adapted to the new social context they were facing, constantly seeking to endow the local customs and traditions with a proper Christian meaning in order to spread the faith[586].

As mentioned above, these relationships in between religion and culture take place on two dimensions—the ontological dimension making individual psychology and the sociological dimension bringing the latter to the visible sphere of society through behavior. Religion and culture's dynamics take place first within the individual as a person, and then translate into

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[581] *Ibid.*, p. 40.

[582] *Ibid*., p. 39.

[583] *Ibid.*, p. 35.

[584] For example, *see* BILLAUD (J.), « Mariage *'charia style'* : pratiques quotidiennes de l'éthique islamique en Angleterre », *Archives de sciences sociales des religions*, 179, 2017, pp. 213-232, where the author describes how 'islamic ethics', within young English Muslims, remain "fundamentally ambivalent, hybrid and fluid"—that is, connected to the cultural environment where they are lived. *Ibid.*, p. 213. In a Londonian vicinity, more precisely, the author argues that Muslims tend to depart from their parent's marriage tradition in favor of practices which are more in line with their own—western—cultural premises. *Ibid*., pp. 216-217. *See*, also, VROON-NAJEM (V.), « Muslim Converts in the Netherlands and the Quest for a 'Culture-Free' Islam », *Archives de sciences sociales des religions*, 186, 2019, pp. 38, 46-47, where the author reports how Dutch converts consider the relationships in between their religious affiliation and belongings to the Dutch culture. *See also*, THIMM (V.), *ed*., *(Re-)Claiming Bodies Through Fashion and Style. Gendered Configurations in Muslim Contexts*, Palgrave MacMillan, Cham (Switzerland), 2021, 317 p.

[585] JOHNSON (K. A.), HILL (E. D.), COHEN (A. D.), « Integrating the Study of Culture and Religion… », p. 139.

[586] *See supra*, Part I—Book I—Chapter 2. The Inter-American Court of Human Rights: a pragmatic approach.

specific behaviors that the external observer can consider. It is individuals who, through their concrete activity, proceed to adapting the religious or spiritual requirements to which they may be subject to the culture in which they would be evolving. In other words, it is the individual believer who determines, given the conceptual and material baggage surrounding him, the acts to adopt in order to better fulfill with religious requirements.

Accordingly, both religion and culture entail the two dimensions—the ontological and the sociological. In this vein, considered as lived realities, culture and religion can prove to be almost indissociable, almost indiscernible from one another. And, in addition, they have a direct impact on one another: religion impacts culture by its prescriptions on individual behavior and it requirements at the social level; culture impacts religion by the representations that it embodies. From a sociological standpoint, they are two highly intertwined realities which maintain subtle and nuances relationships. Yet, they do not necessarily operate in competition towards one another. As the above-mentioned cases of British and Dutch Muslims tend to reveal[587], the dialectics between culture and religion are to be apprehended in terms of complementarity rather than competition.

Precisely, religions are belief systems that translate into specific acts. That is, the acts they command tend to be directed towards greater aims to fulfill, for the benefit of individuals or that of society as such. So are, for example, such basic requirements as prayer (or meditation in the concerned spiritualities) and charity. Cultures, on the other hand, are sets of concepts that preclude the form that an act will take when it is carried out. That is, they preclude the way a specific act will be executed. As a consequence, religion and culture tend to be the same realities on the intellectual level—a set of more or less fundamental ideas, more or less in relation with the material life. It is their practical dimension that discriminates in between them: religion says the 'what' to do, when culture says 'how' to do it. Religious acts tend to be directed towards a greater aim to fulfill; their cultural expression makes them understandable

[587] BILLAUD (J.), « Mariage *'charia style'...* »; VROON-NAJEM (V.), « Muslim Converts in the Netherlands… ».

for the community in which they take place. The first are directed vertically, the second are shaped horizontally[588].

In its adaptation to the western cultural context, Buddhism has proven to integrate cultural traits such as gender equality, democracy and openness to psychology[589]. That is, the internal organization of Buddhist communities tended to follow democratic schemes, the role of women within the latter tended to be reinforced, and the Buddhist considerations regarding the mind and the brain engaged in the (neuro) psychological investigation on the matter. In other words, the core teachings of the religion remained the same, its doctrine and cosmological system remained unchanged. But the way that religion guided its adepts and the language adopted for that purpose changed. The latter evolved to fit more the cultural perceptive categories in force within the societies considered—namely European, American and Australian.

That being said, not all religious acts are susceptible to change or open to cultural variations. Adaptation to culture does not extend to all religious practice. Rituals, for example, tend to be specific acts, strictly codified, and not dependent on any cultural premise[590]. The general behavior to which religion leads, the mode of living it engenders, may, on the other hand, be subject culture and its conditions of manifestation.

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[588] The similarities between religion and culture can be observed on a variety of elements. As argued, they tend to be similar realities on the inner dimension, that is, a set of ontological categories framing individual mind. But even outside the personal inner realm, they tend to share multiple manifestations, multiple ways of manifesting. Religions and culture count both with music, paintings, acts and behaviors; from the early paintings of Renaissance artists, such as Michelangelo and Rafael, to contemporary Christian rock bands, religion and culture have always yielded in similar products. The unique difference parting the two is the type of manifestation, the divide in between the content and the means. When music is a cultural product following the sensitivities of individuals composing a specific culture, and hence materializing cultural differences in between western rock and Korean K-pop; when the techniques it obeys and the auditive shapes that it takes can be culturally oriented, it is its content that qualifies it as religious—buddhistic, Christian, etc. In other words, its external mode of manifesting is precluded by culture, whereas its content determines its religious substance. Once again, the cultural aspect of an element seems to be the 'how' of its manifestations, the shapes it tends to take in order for the addressed people to be able to grasp it. In this perspective, it is determined by the common ways people use to perceive, understand, and communicate. Conversely, the 'what' of an element—that is, its actual content—constitute its substance. When the substance is religious, the element is religious, despite the numerous cultural ways its manifestation can adopt.

[589] SPULER (M.), « Characteristics of Buddhism in Australia », pp. 35, 38.

[590] These acts, though, do not concern society in that they are devoid of the 'communication' dimension at the heart of acts of a cultural nature. These acts do not put in relation the members of society. Rather, they aim at establishing a connection in between the believer and the transcendent authority subject to worship. Traditional religions—Judaism, Christianity, Islam, Hinduism and Buddhism—give an abundant illustration of this type of acts, notably their prayer practices—either individually or collectively.

Besides the strictly ritualistic acts they command, the general behavior that a religion or a spirituality fosters is the fruit of a set of factors that exceed the strictly religious or spiritual dimensions. Among these factors are individual choice, when it comes to embracing them, and the culture in force when it comes to manifesting them in society. Brought to the individual existence, all these considerations define a proper mode of living that a believer elaborates when behaving in society, when abiding by the religion or spirituality embraced. A mode of living individually composed, but which tends to follow general patterns that society offers, especially those relating to the groups, communities and congregations that individuals embrace: to adopt a specific, even individualized, mode of living does not preclude from any group or community membership.

C. Religious communities—differentiated degrees of belonging: Dating back to Aristotle, a particular notion about the human being became a basic concept that has flourished across the ages, especially in the philosophical thought, ever since it was formulated. Referring to one of its most basic characteristics, Aristotle held that the human being is a social animal. In formulating this idea, Aristotle was suggesting that one of the most fundamental drives of the human being is 'the other'; it is seeking other fellow individuals with whom to interact, to build bonds, communities, societies, and even eventually states. Since its formulation, in Aristotle's antique Greek words, the idea spread and fecundated the thought of the most varied philosophers as Thomas Aquinas, Montesquieu, Kant and Anna Arendt.

This tendency of the human being towards sociability leads the human being, as an individual, to establish bonds with 'the other', ultimately gathering in groups and communities. Within the realm of religion, this tendency translates into the forming of religious groups such as faith communities, formal congregations, or new religious movements for example. That is, despite the increasing individualization of the religious experience, individual believers still find to connect and share their practice within groupings specifically intended to that end. These groupings, in turn, can be of different kinds, and their bonds to "the centre"[591] of the religious landscape of society can be of different kinds as well. That is how as different

[591] BECKFORD (J. A.), *ed.*, DEMERATH III (N. J.), *ed.*, *The SAGE Handbook of the Sociology of Religion*, London, SAGE Publications, 2007, pp. 326-329. *See infra*.

groups as Churches, congregations, communities, or proper movements of a religious or spiritual kind can come to existence.

Therefore, from a macro-sociological perspective, a certain dialectics between individuality and community tends to animate the dynamics of present religiosity. In the individuality of their religious or spiritual experience, individual believers adhere to basic key notion that happen to be shared by a variety of individuals. For example, even though they frame their beliefs in different fashion, or have distinct practices to fulfill them on the religious dimension, individuals who identify as Catholics still tend to attend messes, collective prayers, social events with fellow believers… These common experiences act as confluence points bringing individuals together, and accordingly constituting a group, a community or a small society. That is, a whole aggregate of individuals, which exists as an entity in and of itself but without eliminating the specific features that make the individuality of its members.

Indeed, for postmodern religiosity is driven by a high degree of individualization, individuals do not appear to dissolve when integrating a group or a community. Instead, their membership in a group or a community tends to take place on the essential feature of the latter. That is, the adhesion materializes upon the core criteria that define the said group or community in its very essence, thus leaving individuals to freely determine the other aspects of their religious or spiritual identity. Their adhesion to the community, in fact, takes place to a certain degree. That explains how such practices as yoga and meditation, which are primarily Buddhist and Hindou religious practices, integrated the practice and daily life of individuals belonging to other faiths[592]. In other words, individuals who plainly form part of Christian and Catholic communities and congregations, for example, tend to part with the ascetic tradition of the latter religion, and its traditional mortifying practices[593], to instead embrace such practices as yoga and meditation. While they deeply adhere to the ideas conveyed by their faith and congregations, they nevertheless develop their own personal practices in order to further fulfill their faith on an individual level. Thus, they adhere to the community to a specific degree only.

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[592] GIORDAN (G.), « The Body between Religion and Spirituality », *Social Compass*, 56(2), 2009, pp. 226-236. The author argues that the practice of yoga has been developing even in such a context as a "catholic monopoly".

[593] *Ibid.*, p. 227-228.

In other words, the belonging to a community does not dissolve individuals therein; rather, individuals tend to maintain their individuality at the same time as adhering to the essence that constitutes the community or the group. That is, they tend to integrate the principles upon which the latter are erected among their own individual vision of the world and the principles that make this vision exist. Therefore, their adhesion to the community or the group only exists to a certain degree; an adhesion that makes the group or the community exist at the same time as maintains their own individuality. Accordingly, also, they tend to adopt the mode of living engendered by the principles they internalize, which includes those of a practical nature upon which the community or the group rests. However, embracing the mode of living resulting from these principles does not dissolve individuals into one unique and rigid mode of living that all members are meant to share. In the level of the individual, the resulting mode of living tends to cover parts of the individual's daily life, thus allowing multiple, selective, or partial belongings. In the paradigm of postmodern religiosity, belonging to a group or a community of a religious or a spiritual nature tends to impact the individual's mode of living to a certain extent only, thus engendering the individual's sociological complexity.

Therefore, the religious diversity that animates contemporary societies tends to take its roots at the individual level. The observable modes of living tend to arise from the distinctivenesses of the religious experiences. Ultimately, it is these modes of living that materialize the observable diversity within society.

Contemporary societies come to count with an increasing number of belief systems which differ from each other to various degrees—from the most subtle nuance to the most structural difference. In practical terms, the religious diversity that can be observed in society starts at the individual level, with different individuals embracing distinct core beliefs regarding the living experience. Elevated to the social scale, these differences tend to materialize distinct groups of believers, distinct communities, distinct religious and spiritual traditions, and distinct trends of behavioral constants. Hence religiosity, for the external observer, appears more as a mode of living than a religious practice in the narrow meaning of the expression.

The individualization of religiosity, along with its spiritualization, seems to also command a change in the core paradigm of analyzing the religious experience. From a sociological standpoint, to have a religious—or spiritual—experience means to adopt a belief system that is manifested in daily life through rituals, practices and general social behavior. That is, to follow a proper mode of living. A mode of living that is, in turn, perceived by fellow members of society, assessed and valued. And the said perception, which takes place on various dimensions, is key for determining the social acceptance of any mode of religiosity. In legal words, it is key to determine the extent of the exercise of religious freedom, and therefore the social acceptance of any religion as such within a definite society.

2. Religious freedom and perception of religious diversity.

Perceiving religion, as much as perceiving any other social phenomenon, means to evaluate practices, acts, or proper dynamics that religions materialize in the visible sphere of society. As such, the 'social perception' of religious freedom and religious diversity refers to the way in which the individuals that compose a society value the religious behaviors that they perceive (A). Often, this perception tends to be connected to specific ideas making the intellectual life of a society—or its social psyche. In other words, religious behaviors tend to often be perceived by the intellectual categories in force within a society, as impulsed by a variety of agents. Among the latter, one of the main agents is media (B), with its capacity to convey the ideas that structure a society in a given time, with its role of settling for the public the current social issues or put them to the agenda. Often, mediatic reports tend, indeed, to show the conflictive aspects of religion, a specific religious presence or specific religious communities, which calls for exploring the issue from the legal perspective of religion before the courts (C). Eventually, this perception can be subject to a political recuperation that may accentuate the equation of religious presence with conflict and tension, thus fostering deleterious social dynamics for the exercise of religious freedom (D).

A. Social perception of religious freedom: As recent studies show, perceiving religion can go through distinct canals[594], for what is intended by perception in the realm of religion and religious manifestations is an evaluation based on more or less precise concepts. To put it in other words, perceiving is evaluating an empirical reality according to specific concepts which serve as bases for the evaluation. Hence perceiving religious freedom in society becomes evaluating, by reference to these bases, the religious behavior that a religion leads to.

As recent studies show, several aspects may serve as benchmarks for evaluating a religion or its manifestations. For example, A. Portmann and D. Plüss have demonstrated that, within the Swiss context, the medium for evaluating religions tends to be a matrix of several elements, which include the religion's support or inhibition of individual autonomy, its obtrusiveness or discretion, its support for the people in need, its "beauty" or "ugliness"[595]… Likewise, in their study of how Sharia law tends to be perceived in Australia, Anne Black and Kerrie Sadiq brought to light a difference based on the whether Sharia principles were deemed a positive contribution or a negative challenge to Australian laws. They noted that "[w]hile there is public disquiet over family and criminal law applications of *Shari'a* there has been support for legislative change in Australia to facilitate Islamic banking and financial services"[596]. In their own words: "It seems that Islamic banking and finance laws are 'good' Sharia worthy of adoption, whilst personal status laws (marriage, divorce, separation, custody of children and inheritance) are not"[597]. In other words, according to their research, the perception of Sharia principles within the Australian context tends to go through a canal that serves to determine whether they correspond to the ideals of the Australian society or not.

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[594] BRESKAYA (O.), FRANCIS (L. J.), GIORDAN (G.), « Perceptions of the Functions of Religion and Attitude toward Religious Freedom: Introducing the New Indices of the Functions of Religion (NIFoR) », *Religions*, 2020, 11, 507; Van Der NOLL (J.), ROHMANN (A.), SAROGLOU (V.), « Societal Level of Religiosity and Religious Identity Expression in Europe », *Journal of Cross-Cultural Psychology*, Vol. 49(6), 2018, pp. 959-975; PORTMANN (A.), PLÜSS (D.), « Good Religion or Bad Religion: Distanced Church-members and their Perception of Religion and Religious Plurality », *Journal of Empirical Theology*, 24, 2011, pp. 180-196.

[595] PORTMANN (A.), PLÜSS (D.), « Good Religion or Bad Religion… », pp. 183-185. The complete matrix they refer to is composed of: "Autonomy vs. coercion", "Private matter vs. interference", "Obtrusiveness vs. discretion", "Acceptance vs. claim to absoluteness", "Support of people in need", "Enlightenment, education", "Beauty vs. ugliness", "Cohesion vs. dissociation", "Good religion is assimilated religion".

[596] POSSAMAI (A.), TURNER (B. S.), ROOSE (J.), DAGISTANLI (S.), VOYCE (M.), « Defining the conversation about Shari'a: Representations in Australian newspapers », *Current Sociology*, 2013, p. 4

[597] *Ibid*.

In both examples, the perception of religion was an evaluation of the latter—or its manifestations—based on a series of principles. Religion was perceived through more or less specific categories of thought—positive contribution, challenge, factor of cohesion, beauty, factor of enlightenment and education… These categories of thought appear to be abstract principles which express the ideals of the people perceiving the religions at stake. In other words, they tend to materialize ideals regarding the society in which the perceiving agents live, which then serve them to assess whether the religion observed tend to favor these ideals. In addition, these canals of perception seem to change according to the sample addressed. The principles by which distanced members of Churches in Switzerland, which constitute the sample of A. Portmann and D. Plüss' study[598], perceive religion prove to be different from those that govern the Australian perception of Sharia principles. This change in the parameters of perception suggests a connection between the perception and the society. It suggests that the perception of religion operates through basic categories considered as social ideals within a specific social realm. Henceforth perceiving religion seems to be intimately tied with the idea of an ideal social order that members of a society aspire to. Hence the 'good' and 'bad' matrix in the Australian study; hence the 'tolerance', 'education', 'beauty' and the other principles that the Swiss study brought forth.

Being so, the differences in the religious dimensions considered may play a role in determining which principles act evaluating categories. For example, when ethical profit and ethical products may serve for evaluating economic practices[599]; it is necessary to resort to other sets of principles such as tolerance and education when assessing the impact of religions on a more social dimension[600]. Alongside the dimensions considered, social differences between societies also prove to be a key factors in the social acceptance of religious manifestations[601]. Indeed, the differences in perception are diverse and varied and complex—

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598 More precisely, their sample consists of "distanced members of churches, (…) understood as people who belong to a church but do not, or hardly, participate in the activities of their congregation". *See*, PORTMANN (A.), PLÜSS (D.), « Good Religion or Bad Religion… », p. 181.

599 POSSAMAI (A.), TURNER (B. S.), ROOSE (J.), DAGISTANLI (S.), VOYCE (M.), « Defining the conversation about Shari'a…. », p. 4.

600 PORTMANN (A.), PLÜSS (D.), « Good Religion or Bad Religion… », pp. 183-185.

601 Van Der NOLL (J.), ROHMANN (A.), SAROGLOU (V.), « Societal Level of Religiosity and Religious Identity Expression in Europe », *Journal of Cross-Cultural Psychology*, Vol. 49(6), 2018, pp. 970-971.

that make a substantial material to explore for various disciplines, especially sociology and psychology[602]. The existing studies, such as the ones discussed, tend to suggest that the state of a society, at a given time, has indeed an impact on the perception and the acceptance of religious manifestations.

Furthermore, religious behavior and its diversity also conditions the perception of religious freedom a legal concept. Being an umbrella that encompasses religious behavior under one legal category, the perception of religious freedom as a concept depends on how the observable religious behavior—that is, the acts to which it gives way—is perceived. And regarding its perception, as a legal concept, O. Breskaya, L. J. Francis and G. Giordan also demonstrated that it depends on how favorable it seems for "for the promotion of tolerance, the inter-confessional dialogue and ideas of religious freedom"[603]. In other words, when the religious behavior observed, either as emanating from individuals or as set by governing institutions, tends to result in promotion of tolerance and inter-confessional dialogue, the perceiving agents tended to support it. Hence, according to the study, support for religious freedom, as a legal concept, depends on its impact on society, on whether it fosters inter-confessional dialogue and religious tolerance. The study therefore suggests that the perception of the religious freedom, as materialized by religious behavior within the society, goes through specific canals relating to ideal dynamics of society. As the authors argue, "religious freedom in a society is constructed on the intersection of subjective and societal values"[604], thus highlighting the nexus in between the ideal social order and the very patterns of perception.

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602 *Ibid*.

603 GARCÍA-SEGURA (S.), MARTÍNEZ-CARMONA (M.-J.), GIL-PINO (C.), « Analysis of the Perceptions Shared by Young People about the Relevance and Versatility of Religion in Culturally Diverse Contexts », *Education Sciences*, 12, 2022, 667, p. 8. In fact, the authors found that "young [Italian] people mostly support the religious freedom principles when they hold such freedom responsible for the promotion of tolerance, the interconfessional dialogue and ideas of religious freedom". The study was carried on a sample of young Italian students. *See*, BRESKAYA (O.), FRANCIS (L. J.), GIORDAN (G.), « Perceptions of the Functions of Religion and Attitude toward Religious Freedom: Introducing the New Indices of the Functions of Religion (NIFoR) », *Religions*, 2020, 11, 507.

604 BRESKAYA (O.), FRANCIS (L. J.), GIORDAN (G.), « Perceptions of the Functions of Religion and Attitude toward Religious Freedom: Introducing the New Indices of the Functions of Religion (NIFoR) », *Religions*, 2020, 11, 507, p. 4. In turn, « positive perception of religious freedom produces differences between the religious majority, religious minorities, and nonreligious groups, and especially that this difference illustrates a 'significant divide between religious minority/non-religious youth nexus' ». *See*, *ibid*.

Since perceiving is valuing an empirical reality according to specific abstract categories of thought, perceiving religion in society amounts to evaluating the religious behavior that takes place within the latter according to the said categories. As the discussed studies show, these categories of assessment tend to be social patterns, generally representing the ideal social patterns according to the perceiving agents. That is, they tend to be the basic structures of an ideal social order as conceived by the said perceiving agents. The evaluation hence executed on the visible—empirical—realities of religions thus amount to the judgments deemed as 'perceptions' in the studies. That is, when religious manifestations go through the specific intellectual categories serving for the valuation, they yield in conclusions which then turn to be the final perceptions communicated by the perceiving agents—the individuals.

The said categories of assessment can be multiple and varied. As mentioned *supra*, they tend to depend on the specific religious dimension considered and the society in which the religion manifests. They may even be conditioned on the culture that animates society. As a result, the final perception of religion, or a specific religious manifestation, is often widespread into society. In other words, as a result of the multiplicity of sources, some of which, like culture, are immaterial, the final perception of a religion or a religious manifestation tends often to be shared at the social scale. That seems to be the case with Islam and New Religious Movements, for example, in European societies. Being so, the agents involved in the communication process over the said religions have a key role in shaping and influencing the final perceptions of religions and their manifestations.

B. Media and religious diversity: Thanks to their access to people, media have an important capacity to infuse society with the conceptual categories that frame social issues and public debate. Being the primary canals of information, they tend to be the central references to which members of a society refer when addressing an issue of social relevance. More precisely, media "have become integrated into the workings of almost all types of social institutions at the same time as they have become responsible for the general society's public

as well as private communication"[605]. This status gives them a great influence over social dynamics and their mutations, including those related to religion[606].

Consequently, media have an important impact over how members of a society perceive the realities they confront, and through which conceptual categories they assess them[607]. Therefore, they are an important vector in settling which categories compose the ideal social order for a given society. On religion specifically, the social perception of religion tends to depend, to a large extent, on the categories conveyed by media[608]. The latter have become, indeed, "an important producer and distributor of religious imagery"[609]. That is, they tend to condition how religions are perceived, by determining which religious realities are conveyed to the public. And, in doing so, they amount to building the global image of a religion within society. In other words, as main providers of information, media have the capacity to settle the image of a religion in society, by settling which religious realities are to be presented to the public and by which conceptual categories to assess them. As S. Hjarvard explains, "media have acquired an important role not only in the transmission of religious imagery, but also in the very production and framing of religious issues (…) [for religious] organizations and advocates may still produce their own public representations of religion, but the extent to which these get circulated is heavily influenced by the media system and religious

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605 HJARVARD (S.), « The mediatisation of religion: Theorising religion, media and social change », *Culture and Religion*, 12:02, 2011, pp. 121-122.

606 *Ibid*.

607 RATAJCZAK (M.), JĘDRZEJCZYK-KULINIAK (K.), « Muslims and Refugees in the Media in Poland », *Global Media Journal*, Vol. 6, No.1, 2016, p. 2.

608 HJARVARD (S.), « The mediatisation of religion: Theorising religion, media and social change », pp. 119-135.

609 *Ibid.*, p. 128.

organizations are more often forced to react to the media's representations of religious issues than the other way around"[610].

But if they prove to have an important impact in shaping the image of religion in society, especially by determining which conceptual categories through which to examine religions, the actual content that they impart tends to differ. In other words, the conceptual categories conveyed, and the resulting image of religion, tend to differ from one media to another, from one religion and another. For example, within the context of the Great Britain, "Christianity [tends to be] represented in terms of both [traditions of cultural diversity and cultural heritage], with an emphasis on the latter"[611], whereas Islam tends to be portrayed as a potential danger to both society, as a result of the terrorist threat, and culture, for the perceived distinctiveness of its values[612]. In other words, Christian religions tend to be associated with 'tradition and cultural heritage'; whereas Islam is represented through such concepts as (western) 'values' and 'potential violence'[613].

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[610] HJARVARD (S.), *ed.*, LÖVHEIM (M.), *ed.*, *Meditation and Religion. Nordic Perspectives*, Göteborg, Nordicom, 2012, pp. 21-44. Furthermore, the author contends, in another production, that media tend to be governed by a logic of their own, which, in the context of nordic countries, tends to favor secular dynamics. In his own words, "Earlier they were serving other institutions of society (such as politics, science and religion), but now they are increasingly governed by a logic of their own at the same time as they articulate society's common experiences. In this sense, mediatisation is part of the very process of societal secularisation". *See*, *ibid.*, pp. 131-132. An observation shared by P. Bréchon who explains that, within the French context, "information does not reflect 'what is going on in the world', it is rather the result of a *construction* that follows the news that the journalists choose to put forth and the way they frame them" [unofficial translation]. This way, he concludes, "each media, through its birth and development, becomes a sound box for society" [unofficial translation]. *See*, also, BRÉCHON (P.), *ed*., WILLAIME (J.-P.), *ed.*, *Médias et religions en miroir*, Paris, Presses Universitaires de France, 2000, pp. 6-7, 19; HJARVARD (S.), « The mediatization of religion: A theory of the media as agents of religious change », Northern Lights: Film & Media Studies Yearbook, Volume 6, Issue 1, 2008, p. 11, although the latter author conceives 'media' as a broad term which also encompasses artistic and cultural productions such as films and novels.

[611] KNOTT (K.), POOLE (E.), TAIRA (T.), *Media Portrayals of Religion and the Secular Sacred*, Burlington, Ashgate, p. 78.

[612] *Ibid.*, pp. 79-90. The authors even sketch what representation stems out of press articles regarding several religions including Judaism, Buddhism, and other religions. *See*, *ibid.*, pp. 90-93. In this line, they put in evidence that, for example, Hinduism tends to have the same kind of portrayal as Islam, with a focus "on the negative actions of [Hindu] aggressors". *See*, *ibid.*, p. 92.

[613] This tendency tends to be a constant throughout the western world in the late decades. Reporting and analyzing Islam through the categories of violence and threat appears to be widespread in western media, where Islam has acquired quite a specific status since the migrations of the past century that accentuated its presence within western societies, with S. Huntington's portrayal in *The Clash of Civilizations and the Remaking of World Order*, and the terroristic waves that followed 09/11/2001. *See*, in the Australian context, POSSAMAI (A.), OPENSHAW (K.), KHOSRONEJAD (P.), RASHEED (A.), MUBASHAR (A.), « Ramadan: devotion, compassion, and purification in Sydney », *Contemporary Islam*, 16, 2022, p. 194.

Likewise, a 2016 study showed that Australian newspapers appear to emphasize the influence of Christianity on political and social issues[614], with further references in entertainment, business and sport[615]. In turn, similarly to the British context, Islam was "strongly and negatively associated with terrorism and violence"[616] on both national and international spheres.

These studies on how religions tend to be reported in media suggest that the latter associate specific religions with specific ideas and conceptual categories. These ideas appear as key points for the religions to fulfill in order for their presence to be considered as a normal social fact. Hence different religions be connected to different conceptual categories.

In fact, the intellectual categories that structure the reporting on, and resulting assessment of, religions differ on three levels: the religions, the societies, and the specific media ensuring the coverage[617]. In this line, the conceptual categories that frame a religion, within a determinate society, may result of three different factors. First, particular biases against a determined religion may affect the way it is understood or received by society. That seems to be the case with Islam, whose reports continuously question its potential threat for public safety and national culture. Second, particular socio-cultural features may also affect how a religion is considered—meaning that the way religion and society have historically interacted with each other ultimately impacts the way society views religion as a social fact, hence fostering a specific bias regarding the latter. That seems to be the case with Christianity in traditionally Christian societies like Great Britain and Australia, or its subjection to derision in other social contexts such as France[618]. Third, a specific mediatic line may affect the treatment of news

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614 WENG (E.), HALAFOFF (A.), « Media Representations of Religion, Spirituality and Non-Religion in Australia », *Religions*, 2020, 11, 332, p. 6.

615 *Ibid.*, p. 11.

616 *Ibid.*

617 Intending 'media' in a quite large meaning, S. Hjarvard argues that for "instance, some media genres, like news and documentaries, may in general subscribe to a secular world-view, whereas science fiction and horror genres are more inclined to evoke metaphysical or supernatural imaginations". *See*, HJARVARD (S.), « The mediatization of religion: A theory of the media as agents of religious change », *Northern Lights: Film & Media Studies Yearbook*, Volume 6, Issue 1, 2008, p. 11.

618 BRÉCHON (P.), *ed.*, WILLAIME (J.-P.), *ed.*, *Médias et religions en miroir*, Paris, Presses Universitaires de France, 2000, pp. 17-40.

regarding one or several religions, such as sensationalism or "audience profile and political leaning"[619].

With these concepts they attach attach to religions, media prove to be paramount in determining the image of a religion in society and its resulting social acceptability. In fact, their impact is so important that it tends to amount to adjusting the religious practices to the contemporary social settings. "As with other long-term structural processes of modernity like globalization and individualization, S. Hjarvard argues, mediatization is changing the structural conditions for the practice of religion in the modern world"[620]. Consequently, "it makes a highly visible difference by changing the public face of religion"[621]. A face that comes to be assessed according to the conceptual categories that media convey, which ultimately amount to integrate the ideal social order that a society, though its individuals, aspires to—by which religions must abide.

In addition to this decisive impact on the perception of religion, the media treatment of religion also maintains particular ties with the realm of politics, where its impact on the political debate is equally important. More so, according to their line, media may foster, favor or serve as checks and balances to a variety of political movements seeking to make an ideological use of religion and grouped under the umbrella term of 'Populism'.

C. Political recuperation—religious diversity and Populism: Populist movements and political parties are, in themselves, diverse and varied. Nevertheless, they are all characterized by the fact that they practice politics by exalting the People, conceived as a homogenous sociological mass representing a specific category within society[622]. In other words, they lead

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[619] WENG (E.), HALAFOFF (A.), « Media Representations of Religion… », pp. 10-11. For example, the authors explain, "*The Australian* and *Herald Sun* used descriptors in news stories that were more sensational and fear mongering in relation to Islam". *See*, *ibid.*, p. 8. Also, BRÉCHON (P.), *ed*., WILLAIME (J.-P.), *ed.*, *Médias et religions en miroir*, p. 19.

[620] HJARVARD (S.), *ed.*, LÖVHEIM (M.), *ed.*, *Meditation and Religion. Nordic Perspectives*, pp. 40-41.

[621] *Ibid*.

[622] YILMAZ (I.), MORIESON (N.), « A Systematic Literature Review of Populism, Religion and Emotions », *Religions*, 2021, 12, 272, p. 3.

politics by emotions[623], hence the anti-elite rhetorics and the emphasis on 'people' as a dominated homogeneous category of society[624]. Following, their essential characteristic does not tell about their political positioning. Rather, it tells about how they do politics—and, henceforth, they can be positioned on either side of the political spectrum, the left and the right. As an example, former Venezuelan President H. Chavez is considered a populist, for his practice of power, despite leading left wing parties[625]. In fact, his practice of power is even considered to be "a revival of Latin-American populist political-leading tradition, in the realm of the relationships in between the leader and the masses"[626] [unofficial translation].

Nevertheless, contemporary populist movements tend to take position on the right of the political spectrum, thus detracting themselves from other political parties and tendencies on their social conservatism, a sympathy towards free-market economy, and their focus on identity as a core driver for political action. In this line seem to be Hungarian V. Orbán and his "non-secular Christian identitarianism (…) describ[ing] Christianity as 'Europe's last hope'"[627]; Turkish R. T. Erdogan, qualified by I. Yilmaz *et al* as "the most prominent contemporary Islamic populis[t]"[628]; Indian N. Modi's Hindu populism[629]…

Because populist movements and political parties consider identity as a core driver for political action, their political claims and programs are heavily connected to religion. Indeed, whether framed in a nationalistic, culturalist or civilizational narrative, their claims for identity amount to claims for establishing a specific socio-cultural context in which past structures and traditions of a specific nation, culture or civilization be in force. Given the role

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623 *Ibid.*

624 *See*, *inter alia*, TURSKA-KAWA (A.), WOJTASIK (W.), « The Importance of Religiosity in the Formation of Populist Attitudes: the Case of Poland », *Journal for the Study of Religions and Ideologies*, vol. 19, Issue 55, 2020, pp. 36-37; SZELEWA (D.), « Populism, Religion and Catholic Civil Society in Poland: The Case of Primary Education », *Social Policy & Society*, 20:2, 2021, pp. 311, 313.

625 LALANDER (R.), « El contexto histórico del Chavismo y los partidos políticos venezolanos de la izquierda », *Reflexión Política*, Nº19, 2008, pp. 36-48.

626 *Ibid*., pp. 45-46. The original wording, in Spanish language, reads as follows: "Así mismo puede verse como un regreso a tradición latinoamericana de liderazgo político populista, con respecto a las relaciones líder-masas".

627 YILMAZ (I.), MORIESON (N.), « A Systematic Literature Review of Populism… », p. 14.

628 *Ibid*., p. 10.

629 *Ibid*., p. 12.

that religions have had in shaping the dynamics of societies and their social structures[630], these claims maintain substantial ties with the traditional religions that animated the considered society across the centuries[631].

These characteristics put into light the fact that populist movements take inspiration, for their political programs, in the religions which have animated the dynamics of the societies in which they come to exist. While this tendency is explicit with such leaders as V. Orbán, R. T. Erdogan, and N. Modi, whose political programs appear to be explicitly, and to a large extent, influenced by religion, it it also the case with other leaders claiming for safeguarding the national 'culture' or the 'civilization'. The French *Front National*, for example, which is deeply inserted into the secularist French Laïcité tradition, still "instrumentalises Christianity in its politics, [and thus] often finds itself at odds with the institutional Catholic Church"[632]. More precisely, it "emphasize[s] the 'Christian roots' of France (while at the same time noting that those roots were 'secularized' [laicisé] by the Enlightenment)"[633]. In other words, the party puts forth a political program which is rooted in the Christian frameworks that have historically structured France's social traditions, though keeping aside the Church as an institution for *Laïcité* purposes. And the same line of reasoning could be applied to the newly constituted *Reconquête* party, under the leadership of Eric Zemmour, which advocates for safeguarding the French 'culture', or to the Dutch *Party of Freedom*, led by G. Wilders, which "defends a conception of the Netherlands as belonging to the West's Judeo-Christian and Humanist culture"[634].

Beyond the movements which explicitly take roots in religion, such as V. Orbán's and N. Modi's and R. T. Erdogan's parties, the other populist parties tend to claim a 'national',

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630 *See*, *supra*, Part I—Chapter 1—IV. Pluralism as Oligopoly.

631 *See*, with special relevance, the chart provided by the authors *in* YILMAZ (I.), MORIESON (N.), « A Systematic Literature Review of Populism… », p. 9.

632 DE HANAS (D. N.), SHTERIN (M.), « Religion and the rise of populism », *Religion, State & Society*, 2018, 46:3, 2018, p. 177.

633 BRUBAKER (R.), « Between nationalism and civilizationism: the European populist moment in comparative perspective », *Ethnic and Racial Studies*, 2017, p. 1199.

634 YILMAZ (I.), MORIESON (N.), « A Systematic Literature Review of Populism… », p. 15. For an analysis of these trends in identity Populism, *see*, BRUBAKER (R.), « Between nationalism and civilizationism… ».

'cultural' or 'civilizational' social order whose core matrix stems from the traditional religion that animated the society in which these parties exist. While they can take distance from religion as such, or religious institutions, they advocate for social ideals that are intrinsically connected to religion for stemming out of it. Therefore, the core matrix of the said social order appears to be structured in such a way that it favors the traditional majority religions, to the detriment of minorities. That is, by the token of their identity claims, these parties' political programs amount to causing detriment to religious minorities, and therefore to religious freedom itself.

As was discussed in the previous sections, the perception of religion and religious freedom, by believer's acts and behaviors, operates through the internal conceptual categories proper to each individual. In other words, individual behavior is subject to an intellectual valuation that operates through the specific beliefs priorly embraced by individuals, along with the idea of the ideal social order that the said individuals picture in their *forum internum*. In other words, the process of valuation oscillates in between basic fundamental beliefs, embraced as intellectual premises, and an ideal objective intended as a specific social order. Therefore, media prove to have an important impact in shaping these conceptual categories, and determining which are the characteristics of any given religion[635]. Henceforth, they also have an important impact in sketching the image of the ideal social order for their society. And besides media, political movements and parties who maintain ties with religion, even at the conceptual level exclusively, also have a decisive influence in settling which order should regulate social dynamics. In this regard, Populist movements and political parties share a common feature with conservative parties, such as the Christian Democrats. However, the latter distinguish from the former on their stance towards democracy and minorities, which they tend to include within their national (political) project. Populist movements and parties, by contrast, tend to exclude religious minorities from their political project, for considering they do not fit in. Henceforth, Populist parties' impact proves to be especially detrimental to religious minorities, as their claims amount to questioning their very presence. Whether based on a national, cultural, civilizational or simply religious narrative, Populist movements tend to consider religious minorities as being alien to the social order they seek to establish.

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635 RATAJCZAK (M.), JĘDRZEJCZYK-KULINIAK (K.), « Muslims and Refugees in the Media in Poland », *Global Media Journal*, Vol. 6, No.1, 2016, p. 2.

All these factors contribute to having how individuals composing a society relate to religion, religious manifestations and religious minorities. In fact, all these factors merge into how individuals relate to religion, whether as insiders or outsiders—whether as adhering members of a religion or external observers of the latter. In turn, these specific stances, on the micro-level of the individual, materialize social dynamics that can be observed on the macro-level of society. They materialize patterns in the way society relates to religion, to specific religions and religious minorities—especially the newly established within the latter.

Systematizing these tendencies and social patterns allows to better grasp the dynamics of religious diversity within society. It allows to abstract the said dynamics into a model which enlightens more clearly the dynamics taking place between individuals, groups and communities. Given 'systematizing' is driving-out the patterns governing empirical realities, the level on which these realities come to be discussed changes also. In other words, exposing empirical realities taking place on micro-level takes the language and logic of empiricism. Systematizing them into structural tendencies that can be observed at the macro-level requires to resort to the specific angle of a specific ambit of sociology: axiology.

II. Religious Freedom in Postmodern religiosity—an axiological perspective.

Emerging as a protuberance of philosophy in the 1890s, under the auspices of E. Von Hartman[636], axiology is a specific discipline within philosophical scholarship. It can be defined as "the science of moral values, a theory of values or the branch of philosophy that dwells on moral values"[637] [unofficial translation]. In that, it has a predilection for ethics and aesthetics[638], but finds fertile fields of application in other branches and sciences as well[639].

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[636] *See*, VERBEECK-BOUTIN (M.), « De l'axiologie », *CeROArt* [Online], 4, 2009, para. 4.

[637] *Ibid*. The original wording, in French language, reads as follows: "L'axiologie (du grec : axia, valeur, qualité) peut être définie en philosophie à la fois comme la science des valeurs morales, une théorie des valeurs ou une branche de la philosophie s'intéressant au domaine des valeurs''.

[638] *Ibid*.

[639] EDWARDS (R.), *ed*., *Formal Axiology and Its Critics*, Leiden, Brill, 2021, 227 p.

For it focuses on the study of values, axiology dwells, in fact, on patterns. It considers the structural logics that make a system. Indeed, values being the structural logics ordinating an aggregate of features into one comprehensive system, the study of values is the study of the patterns that compose the said system. Whether being of an intellectual essence, a physical nature or any assemblage of elements of a material or intellectual type[640]; as long as the system's components remain in keeping with each other and attached following a specific order, the system will have the tendency to follow rules, to be governed by structural principles, to be erected on specific bases. Axiology, therefore, is the discipline that dwells on these rules, structural principles and specific bases with the aim of shedding light on the dynamics of the system itself—from its premises to its outcomes.

When considering society—that is, when dwelling on social systems—, axiology tends, therefore, to bring out the dynamics that structure that latter. In other words, it brings out the "guiding principles"[641] making the observed reality, even in instances where sorting out the precise values at work can prove to be difficult[642].

From this perspective, religious diversity, as described in the previous sections, tends to materialize specific dynamics at the social level. As the religious experience takes more spiritual and individualistic traits, religious and spiritual belonging tends to scatter. A tendency that paved the way for new religions, new religious and spiritual groups and communities to appear and crystallize. In other words, the extreme diversification of belief and individualization of meaning, as described in the previous sections, seems to pave the way for a multiplication of new religious groups within all societies around the world[643] (1). As some of them 'appear' in societies that pre-exist to them (2), they can pose as a challenge on multiple aspects (3). Thus, in diversity terms, the issues posed by this new religious

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640 *Ibid*.

641 ROCCAS (S.), « Religion and Value Systems », *Journal of Social Issues*, Vol. 61, No. 4, 2005, pp. 750, 753.

642 As S. H. SCHWARTZ states, measuring values and determining the part that each one takes in shaping individual behavior or social dynamics can be rather difficult for the "lack of reliable empirical methods allowing to measure the values". SCHWARTZ (S. H.), « Les Valeurs de Base de la Personne : Théorie, Mesures et Applications », *Revue Française de Sociologie*, 2006/4, Vol. 47, p. 929.

643 BECKFORD (J.), « Response to Adam Possamai », *Journal of Sociology*, Vol. 53(4), 2017, p. 836.

presence (NRP) seem to be less linked to new religious or spiritual movements *strict sensu* than to the novelty of their presence itself.

1. New Religious Groups—Movements and Congregations.

As pointed out along the previous lines and chapters, globalization's multiple and multi-dimensional streams have been a central factor in the development of new religious movements across the planet. To put it in simple words, they exposed every society to the ideas present in every other. It transported what could be considered as traditional religions in one society, originally identified with specific historic-cultural areas, to other societies where they proved to be new. In these newly accessed societies, the said religions usually developed slowly, first as minorities and then as larger—deeply rooted and integrated—religious groups[644].

Along with this geographical movement, the intellectual movement of concepts and ideas confronted traditional belief and meaning systems with new ideas and newly constituted cosmovisions. This confrontation, especially with new scientific findings, seems to have caused a deep questioning of traditional belief systems that ultimately resulted in the individualization of the very production of meaning—which, in turn, paved the way for the individualization of belief systems as such. Indeed, the confrontation with contemporary social and intellectual settings is key for the emergence of religions. As E. Durkheim observed in 1912, religions are intimately connected to the given conditions of human existence—for these conditions, according to him, are the origins of their apparent truthfulness[645].

Following, new communities of meaning come to exist. Groups crystallize and solidify around common visions of the world, common systems of meaning, common

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644 *See*, for instance, *Religious affiliation in Australia, 1971-2021. Exploration of the changes in reported religion in the 2021 Census*, issued by the Australian Bureau of Statistics on 04/07/2022 following the 2021 census, and available at https://www.abs.gov.au/articles/religious-affiliation-australia (last accessed: 06/12/2022); the augmentation of the buddhist community in France as discussed *in* CAMPERGUE (C.), « Le bouddhisme tibétain en France », *Histoire, Monde et Cultures Religieuses*, 2013/1, pp. 137-168.

645 DURKHEIM (E.), *Les Formes Elémentaires de la Vie Religieuse. Le Système Totémique en Australie*, Paris, LGF — Livre de Poche, 1991, pp. 41-42.

cosmovisions[646]. The novelty of the ideas, of the meaning systems and cosmovisions around which they crystallize can thus cause them to be alien—in total or in part—to the socio-cultural areas where they come to exist. The hyper-real religions discussed *supra*, for example, provide an eloquent illustration of these new communities of meaning. That is how, either freshly born or reaching areas where they happened to be unknown, the new systems of meaning come to properly incarnate in groups of individual adherents. In other words, whether surfing on the multidimensional streams of globalization or caused by various complex doctrinal, ideological or organizational factors[647], the total number of religious groups appears to be augmenting "in bewilderingly varied directions even in similar types of countries"[648].

Therefore, whether traditional religions in other parts of the world or newly constituted religious movements within specific socio-cultural settings, the globalization streams caused some religions to be present in areas where they were nearly unknown. In other words, due to their novelty therein, even traditional religions become proper new religious movements in the areas where they were historically absent or unknown.

Quite new in scholarly nomenclature, the category of 'New Religious Movement' has first emerged as a substitute for those terms as 'sects', 'cults', and 'cultic movements'. The latter were tainted with a pejorative meaning, not quite suitable for describing the religious reality from a scientific—neutral—point of view[649]. Accordingly, NRMs can be described as religious groups, which have newly emerged within a given religious or socio-cultural context. Their recent establishment therein can drive them to be at odds with society's patterns and dynamics—a feature that tends to distinguish them in three types.

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[646] *Ibid.*, pp. 52-53.

[647] The tendency effects also traditional religious communities, as even traditional religions have been subject to diversification with time, leading the way for new congregations and communities to be formed. *See*, BECKFORD (J. A.), *ed.*, DEMERATH III (N. J.), *ed.*, *The SAGE Handbook of the Sociology of Religion*, pp. 325, 328. *See* also, the "mystic-esoteric nebula'' described in BAUBEROT (J.), *ed.*, *Religions et Laïcités dans l'Europe des Douze*, Paris, Syros, 1994, pp. 193-194.

[648] BECKFORD (J.), « Response to Adam Possamai », p. 836.

[649] BECKFORD (J. A.), *Cult Controversies. The Societal Response to the New Religious Movements*, London, Tavistock Publications., 1985, pp. 17-21.

The first type is that of "Deviant religious groups"[650]. That is, new religious groups emanating, for example, from well-established religious traditions. This type of NRMs gathers religious denominations and communities which are aligned with both cultural patterns and social institutions of a society, thus fitting well within the overall established social order[651].

The second type, referred to as "Sectarian religious groups"[652], tends to depart from the existing dominant religious groups whose authority and legitimacy they reject, but nevertheless without shaking the established social order making the bases of the societies in which they exist[653]. In this category can be classified newly established religious denominations, which gain autonomy from an already existing religious denomination. On a historical perspective, the Protestant Reformation yielded in many groups of this type in several European countries: Presbyterians, Quakers and Anglicans in England; Lutherans, Pietists, and Anabaptists in Germany…[654].

Eventually, there is a type of NRMs which, in addition to rejecting or being rejected by dominant religious communities, "exist[s] in a high degree of tension with the larger social order"[655]. In other words, this type of NRM comprehends those religious movements which lack the acceptance of social institutions, and, in addition, appear to be misaligned with the socio-cultural features of the society where they exist. As sociological groupings, they present a certain "degree of [in]congruence (…) with the 'dominant culture and dominant institutions' of [the] society"[656] where they exist. Hyper-real religions tend to form part of this type of NRMs. And alongside them, perhaps on a higher degree of incongruence with society, are the

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650 BECKFORD (J. A.), *ed.*, DEMERATH III (N. J.), *ed.*, *The SAGE Handbook of the Sociology of Religion*, p. 229.

651 *Ibid.*, p. 229.

652 *Ibid*.

653 *Ibid*.

654 *Ibid.*, p. 325.

655 *Ibid.*, p. 229.

656 *Ibid*.

shamanic religions developing in the socio-cultural areas where consumption of psychedelic substances is both prohibited by law and considered a deviant practice[657].

This tripartite dichotomy also allows to better grasp the difference in between religious 'congregations', 'movements', and other groups. These different denominations point at the same reality—a groups of people sharing a particular faith or particular practices. The difference lies in the central reference to which they are compared. The terminology seems, indeed, to depend on the proximity of the movement considered with the mainstream religion of a given social context. In other words, when new religious movements, congregations, denominations, sects, cults, are groups of people sharing a faith in a particular meaning system, the term chosen to qualify them depends on how far they are from the centre[658]: the mainstream religious movement of a determined social context[659].

Each religious movement, of each of the three types, emerges from an effort to proposing a better system for reading and dealing with reality. While, from an external view, they can bear distinct features, rely on distinct premises and induce distinct practices, they all tend to deploy a system of ideas likely to explain reality and guide the living experience. New and ancient, religious movements bear the characteristic of being structured and consistent systems of ideas, with their own premises, bases, and structural logics. In other words, they bear their own patterns and values. From a sociological point of view, they are axiological systems as such, which depart from one another on the conceptual level, and distinguish themselves from one another on the individual '*praxis*' level. Being that so, not only do they interact with each other in society, but they also interact with society as such—the latter being the global axiological system that encompasses them all.

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[657] Within this perspective falls the above discussed case ECtHR, Third Section, Decision, 06/05/2014, *Alida Maria Fränklin-Beentjes and Ceflu-Luz Da Floresta v. the Netherlands*, Application n° 28167/07. *See*, also, CAIUBY LEBATE (B.), CAVNAR (C.), *Prohibition, Religious Freedom, and Human Rights: Regulating Traditional Drug Use*, pp. 45-131.

[658] BECKFORD (J. A.), *ed.*, DEMERATH III (N. J.), *ed.*, *The SAGE Handbook of the Sociology of Religion*, pp. 326-329.

[659] *Ibid*., p. 326, *in fine*.

2. Society and new religious diversity: an axiological issue.

The narrative of 'centre' and 'periphery'[660], as set by the Religious Economy Model, tends to reveal the central element in the analysis of diversity and pluralism. It reveals the reference from which diversity is assessed. That is, it sets the reference according to which the elements making diversity are examined. It reveals the central 'benchmark' by which the evaluation of these elements is conducted. Consequently, it also reveals the rationale at work when determining what diversity is made of.

In other words, this narrative reveals what is conceived as normality in a given situation—the central reference from which religious groups are assessed, which tends to be the dominant religious groups. Dominant religious groups are defined as these religious groups "that are most strongly aligned with dominant cultural patterns and social institutions"[661]. In the perspective of the Religious Economy Model, it seems, indeed, that the more a religious group is different from the mainstream dominant religious groups within a definite social context, the more it will be considered as a new denomination, a new movement, a 'sect' or a 'cultic movement'.

In addition, given dominant religious groups are the ones which are most in line with dominant cultural patterns, a religious movement that departs from them will also tend to take distance from society's cultural patterns.

The individuals making a religious group tend to share the specific practices of the latter, but also the beliefs on which they rest. Indeed, what causes the group to exist is the adherence to the beliefs it provides. The conceptual system on which a religious or any spiritual group rests is the primary material of adherence thereto—both on the individual and the collective level. The individuals who adhere to such groups share the common ideas making the religious group's system of thought regarding reality or such concepts as life, death, and the 'human lived experience'. In other words, adherence to a religion, a religious group or a spiritual movement tends to induce the embracement of the practices of the latter as much as the

[660] *Ibid.*

[661] *Ibid.*, p. 229.

adherence to the latter's conceptual premises. These practices, indeed, are only the visible manifestations of the set of ideas priorly embraced on the conceptual level.

Furthermore, the practices concerned can be very diverse, distinct from each other, and apply to distinct dimensions of the human existence. In that, they have a direct impact on how people relate to each other and interact with each other in social life, outside the specific boundaries of the religious groups considered. The principles governing the said behavior also induce practices that exceed the religious boundaries. For adherence to a religious group is primarily an adherence to the latter's system of meaning, it tends to take place on the intellectual dimension—in the realm if ideas. Thus the principles making the conceptual framework of religious and spiritual movements also translate into behaviors in the social life[662].

As such, groups of a religious or spiritual nature are—more or less independent—micro-societies inside the global society in which they happen to exist[663]. Originally, a 'society' is the abstract aggregate of a variety of people who share two elements: a common set of rules

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[662] The tendency is not proper to new religious or spiritual movements. Traditional religions also count with practices which overflow into daily life, either through their conceptual premises or because of the obligations they subject their adherents to. For example, in ECtHR, Second Section, Judgment, 03/04/2012, *Francesco Sessa v. Italy*, Application n° 28790/08, the European Court of Human Rights examined the case of an Italian barrister who could not attend a hearing, scheduled on a Saturday. The reason for which he could not attend the hearing was that, being jewish, he has to observe Sabbath and abstain from professional activity.

[663] According to F. Tönnies, the original form of life in common is the 'Community' (Gemeinschaft), a construct of "absolute unity that exclude any distinction of any of the parties composing it" following E. Durkheim's words. *See*, DURKHEIM (E.), « Communauté et société selon Tönnies », *Sociologie*, n°2, vol. 4, 2013 [Online], para. 3. That is, a form of association where the rules are tacit and spontaneously accepted by every member of the association. Conversely, a 'Society' (*Gesellschaft*) is an aggregate of independent individuals juxtaposed to one another. *Ibid*., para. 13. In this type of association, each individual is considered to have rules of their own, at least as ideal rules to follow. Accordingly, the actual rules in force within the association are the ones expressly established as such by its members, in the form laws, regulations—in the form of a 'social contract' in the meaning of J. J. Rousseau. In addition, F. Tönnies argues, the original form of association in between individuals was the 'Community', in the form of families for example. But the progressive individualization of the human existence, due to socio-economic conditions of living, turned that association into something more of a 'Society'. *Ibid*., para. 14. It changed, accordingly, the rules structuring the group dynamics—moving from unconscious inherent set of rules to something deliberately willed. *Ibid*. In this line of thought, given the degree of individualization of the contemporary religious experience, religious groups and movements appear to be aggregates of independent individuals, who deliberately choose to associate in a religious group or community. Therefore, individuals deliberately embrace the rules structuring the group's dynamics—from its religious and spiritual practices to other kinds of mundane everyday dynamics such as reunions, meetings, etc. In other words, due to the individualization of the religious experience, and its spiritualization, religious groups and movements appear to be small 'societies', in the meaning that F. Tönnies gives to the word. Given they integrate an overall society that encompasses them all, they become 'micro-societies' within the latter.

and principles structuring their behavior[664], and a definite geography. These two elements embody them into one sociological entity called 'society'. As explained *supra*, the set of mental patterns shared on the social level, and guiding the individual behavior is what tends to be referred to as a 'culture'[665]. It is the embracement of these mental patterns that manifest in the various realities that can be observed in society, which range from marital unions to artistic productions. In continuity, a society is the sociological entity that embodies all the people who share these rules and mental patterns. Being so, a society is not necessarily constrained to state's frontiers; it can exist within different realms, as long as the individuals who integrate it embrace the same sets of rules and mental patterns. So is the case for nation-states, which bring individuals together around common historical legs; so is the case of private societies gathering people of the same profession such as lawyers and attorneys… Religious and spiritual groups tend to fall in the same category, as they tend to unify individuals around common ideas and principles, that they manifest in daily life through practice or through general behavior.

In this perspective, just as the global society in which they happen to exist[666], religious and spiritual movements appear to follow an axiological order. Being aggregates of independent individuals who deliberately choose to incorporate and embrace the rules in force within the movement, they are 'micro-societies' of a religious or spiritual nature, just as bar associations are 'micro-societies' of barristers. As such, they may even follow specific, less rigid, mental patterns in their mutual interactions, in which case the dynamics of the group may amount to a proper culture circumscribed to the considered movement. In this perspective, the different rules and structures by which their behavior abides become the values of the system of thought that they embrace and manifest in daily life. In other words, their grouping follows a specific axiological order—an order made of the different principles structuring the social life of their adherents. Furthermore, "the more a person is committed to religion, the more likely he is to accept [the] values endorsed by his religious group"[667]. When this order starts

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[664] *Ibid.*

[665] *See supra*, Part I—Book I—Chapter 1—IV. Pluralism as Oligopoly, especially C. Lévi-Strauss' developments.

[666] Which, for the purposes of human rights application, has to be understood as the 'state'.

[667] ROCCAS (S.), « Religion and Value Systems », *Journal of Social Issues*, Vol. 61, No. 4, 2005, p. 757.

presenting differences with the global axiological order on which the overall society rests, the religious groups considered start to take distance from what the Religious Economy Model terms as the 'centre'. It is following the same logic that the dominant religious groups, within a given society, tend to be at the centre of the religious economy. They "are most strongly aligned with dominant cultural patterns and social institutions"[668]. A characteristic that makes them the central reference parting from which other religious movements are assessed.

If the assessment of a religious group starts with a sort of comparison with the dominant religious group, it seems that, ultimately, it is the axiological structure of the latter that presides over how the rest of society will considers it. The further from the centre, the further from society's established social order, the more the presence can pose as a challenge for society. The issues arising from religious diversity seem, indeed, to all converge in the axiological differentiation in between religions, new religious or spiritual groups and society itself. The religious or spiritual practices rejected by society only contribute to making this rejection visible, for one cannot contradict values without rejecting the practices they lead to. "The collective character of a social context (the high level of identification of its participants) depends on shared norms and values"[669]. Whenever practices contradict these shared norms and values, they tend to be problematized by the society in which they manifest.

3. New Religious Presence and the established social order.

This new configuration of religiosity, at the individual and the collective level of society, is source to a new complexity. As J. A. Beckford argues, the "current patterns of religion and spirituality (however they are defined) are confused and confusing"[670]. Further substantiating this idea, he adds that "[g]one are the days when it seemed that a small number of concepts, such as functional differentiation, secularisation, privatisation or the rise of new religions, could adequately capture the dominant features of change and continuity. Instead—and partly in response to rapid increases in transnational migration and knowledge about previously

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668 BECKFORD (J. A.), *ed.*, DEMERATH III (N. J.), *ed.*, *The SAGE Handbook of the Sociology of Religion*, p. 229.

669 BERGER (P. L.), *ed.*, *The Limits of Social Cohesion. Conflicts and Mediation in Pluralist Societies*, Boulder (Colorado), Perseus, 1998, p. 105.

670 BECKFORD (J.), « Response to Adam Possamai », p. 836.

obscure religions or parts of the world that had evaded the sociological gaze—it seems as if religious trends are heading in bewilderingly varied directions even in similar types of countries"[671]. In addition, this complexity seems to affect all geographical areas of the world: it seems to be a spreading phenomenon on all continents, in all societies. Constant, indeed, are "the processes of adaptation, mutual influence, and multiple belonging that are the product of plurality and change in every society"[672].

Within this diversity in the religious landscape, as argued *supra*, some religions, some religious or spiritual movements might be the causes of issues for the established social order. In fact, they can even be perceived as proper threats for the latter by a plurality of parties. In the specific case of NRMs, J. A. Beckford explains, for example, that they "are predominantly characterized in the indigenous sociologies of the person-in-the-street by their allegedly harmful or destructive effects on members"[673]. J. T. Richardson, for his part, states that NRMs are often constructed as "an alleged threat"[674] by state authorities, and hence faced by the latter for a variety of reasons including those of a politico-institutional type[675]. In other words, the 'problematization' of religions, religious or spiritual movements, as well as the practices they convey, may arise from different agents. Depending on the context, religions, religious or spiritual movements may be subject to pressure and dislike when "they face obstacles of wide-spread and socially embedded cult stereotypes as well as dearth of institutional allies to come to their defense"[676]. So seems to be the case for the Latter Day Saints, for example, within the Texan context[677]. So seems to be the case for Islam, Pentecostalism and Shamanic religions within the European context.

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671 *Ibid*.

672 AMMERMAN (N. T.), « The Challenges of Pluralism: Locating Religion in a World of Diversity », *Social Compass*, 57(2), 2010, p. 156.

673 BECKFORD (J. A.), *Cult Controversies…*, p. 98.

674 WRIGHT (S. A.), *ed.*, RICHARDSON (J. T.), *ed.*, *Saints under Siege. The Texas State Raid on the Fundamentalist Latter Day Saints*, New York, New York University Press, 2011, p. 125.

675 *Ibid.*, pp. 124-125.

676 *Ibid*., p. 142.

677 *See*, *ibid*.

Across the recent decades, Islam has been a central issue in Europe. With the surge of 'identity' as a social issue within the continent, it, indeed, became a central topic for many European countries. And eventually, its nature as a (novel) social issue was catalyzed by the terrorist attacks committed in the name of Islam, that animated Europe's dynamics as a society from the early 2000s. More specifically within Europe, it is in France that Islam seems to be subject to a special 'problematization', as the latter country counts with the largest Muslim minority in the West[678]. Yet, in actual facts, Islam is not strictly speaking a 'new' religion in Europe; its presence within the continent can be traced back to the first half of the XXth century. Yet, it is during these recent decades that it rose as a social issue, driving questionings and interest regarding its compatibility with European societies in general, and with the French society in particular.

Indeed, France's relationships with Islam are quite complex—both multilayered and multidimensional. In addition to the worry caused by the terrorist attacks reinforcing Islam's association with the orientalist constructions spinning around its 'inherent violence' and 'resentment'[679], France's treatment of Islam seems to bear colonial aspects[680], to be characterized by an abstraction of Muslims into an ethnic-racial category rather than a faith community[681], all of which takes place in a context of a particular media coverage and political treatment[682] that accentuate discriminations and the marginalization[683]. In other

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678 By 2020, "Muslims in France (including immigrants and subsequent generations born in France) [were] estimated to be about 6%–8% of the total French population today": *see*, BEAMAN (J.), « France's Ahmeds and Muslim others: The entanglement of racism and Islamophobia », *French Cultural Studies*, Vol. 32(3), 2021, p. 270.

679 SAID (E. W.), *L'Orientalisme*, Points, Edition du Seuil, 2005, 581 p.; SAID (E. W.), « Orientalism Reconsidered », *Cultural Critique*, No. 1, 1985, pp. 89-107. *See*, also, LEWIS (B.), « The Roots of Muslim Rage. Why so many Muslims deeply resent the West, and why their bitterness will not easily be modified », *The Atlantic*, 266(3), 1990, pp. 47-60; HUNTINGTON (S.), *The Clash of Civilizations and the Remaking of World Order*, New York, Simon & Schuster, 1996, 367 p.

680 NADI (S.), « L'islamophobie comme modalité idéologique des contradictions raciales en France », *French Cultural Studies*, Vol. 32(3), 2021, pp. 187-197.

681 DAWES (S.), « Islamophobia, racialisation and the 'Muslim problem' in France », *French Cultural Studies*, Vol. 32(3), 2021, pp. 180-181; BEAMAN (J.), « France's Ahmeds and Muslim others… », p. 275 where the author states that, with regards to muslims within the French context, the "cultural difference is framed as religious difference with racial and ethnic underpinnings".

682 As an example, *see*, DALIBERT (M.), « From Ni putes ni soumises to #metoo in the French press: Between the hegemony of Whiteness and the Otherness of Muslims », *French Cultural Studies*, Vol. 32(3), 2021, pp. 235-250. *See*, also, an excerpt of Nadine Morano's interview in BEAMAN (J.), « France's Ahmeds and Muslim others… », p. 275.

683 BEAMAN (J.), « France's Ahmeds and Muslim others… », pp. 269-279.

words, the ‘Islam’ issue in France seems to reveal a refusal of the former by the latter. That is, Islam is perceived to be governed by specific logics and social dynamics that are alien to the French traditional culture. It is perceived to stem out of distinct premises from those that made the French cultural tradition, and abide by specific dynamics which are distinct from those which have given way to the contemporary French society. In short, Islam is perceived as not corresponding to the French cultural tradition, not fit—nor desirable—to the actual French social context. That is, for instance, what *Les Républicains*’s member Nadine Morano expresses when she states that France is “a Judeo-Christian country—as General de Gaulle said—of the white race, which attracts foreigners”[684]—before adding: “I want France to remain France. I don’t want France to become Muslim”[685].

The stated incongruence in between Islam and the French cultural tradition means, in actual facts, a perceived inadequacy in the core dynamics of the two. The French society is an emanation of the Judeo-Christian religions and spiritualities. In other words, contemporary France, as a culture, is the present crystallization of historical social dynamics that revolved around Judeo-Christian religions and spiritualities. Islam being different from the said religions, its impact on social dynamics resulted in distinct societies. In more simple words, the structure of a society that has been confronted to Judeo-Christian religions is distinct from the structure of a society that has been confronted to Islam, for the two religions rest on distinct premises, follow different logics and abide by distinct principles. That is, the axiological structure of the two religions being distinct, their final social products—the societies that emerge out of their impact—are equally distinct. That seems to be the reason for which Islam tends to be considered, in present times, as alien to the French historical cultural tradition. It also allows to explain to what extent the French state is reportedly “show[ing] an unequal legal treatment regarding one religion in comparison to other religions, for instance Christianity, that also exhibits fundamentalist tendencies”[686].

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[684] *Ibid*., p. 275.

[685] *Ibid*.

[686] KÄSEHAGE (N.), « No Country for Muslims? The Invention of an Islam Républicain in France and Its Impact on French Muslims », *Religions*, 13, 2022, p. 50.

In the seminal *S.A.S v. France* judgement for example, which has been abundantly commented in the first chapter of the previous Part, the defending state—France—justified the measure forbidding the litigant from wearing a full-face veil by the need to guarantee a space where individuals could engage and interact[687]. In other words, the defending government deemed this particular manifestation of Islam[688] to be incompatible with the standards of social interactions in the public (visible) realm, as they traditionally took place within the French society. According to the defendant state, the French culture and its underlying principles, when it comes to social interaction, was at odds with such a practice as covering one's face[689]. The practice did not conform to the normal way of leading social interactions. The ECtHR accepted these arguments, and accepted them as a legitimate aim to pursue, through restriction of article 9 of the European Convention[690]. To put this idea in more suitable words, the defending state, in this case, considered a manifestation of Islam to be at odds with the established social order within the French society[691].

The axiological incongruence in between Islam, as manifested in the case, and the global social order of the French society was lying at the heart of the issue. More generally, these axiological incongruences lie at the heart of the treatments of Islam in the French context. Islam, as a social issue, tends to be assessed and considered from this angle by the French government as much as the society itself. In other words, within the French context, Islam, as a religion[692], is perceived to be a challenge to the established social order on which France, as a society rests. Being a challenge to the said social order, its expression tends to be

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687 ECtHR, Grand Chamber, Judgment, 01/07/2014, *S.A.S. v. France*, Application n° 43835/11, paras. 82, 141.

688 That is how the defendant viewed it. *See*, *Ibid*., para. 76. Covering the head is usually considered a religious duty for Muslim women; the way of covering the head may, in turn, be subject to cultural considerations. That is how the same religious duty is performed in such diverse ways as wearing a headscarf, or a *abaya*, a *burqa*, etc. Of Pakistani origin, the covering used by the defendant was, in her view, the correct execution of the religious requirement. Thus, even though it is not devoid of a cultural perception, the manifestation remains endowed with a religious substance given that is how the applicant considered it.

689 ECtHR, *S.A.S. v. France*, para. 144.

690 *Ibid*., para. 122.

691 Similarly, covering the head, which tends to be considered a religious duty for Muslim women, is also subject to rejection, and even in other European Countries. *See*, HASS (B. T.), LUTEK (H.), « Fashion and Faith: Islamic Dress and Identity in The Netherlands », *Religions*, 10, 2019, p. 364, where the author argues that "wearing of headscarves by Muslim women 'is regarded as a total rejection of the Dutch way of life'".

692 A religion leading to a specific set of practices and behaviors generally abstracted into, and comprehended under, the term 'sharia'.

minimized, either through state law or phenomena of a social nature such as discrimination or marginalization[693]. As T. Sealy and T. Modood explain, "[i]n a context marked by concerns over aligned social and political values, especially those around gender and sexuality, as well as by security concerns and state responses to (violent) radicalisation, Islam and Muslims have come under greater scrutiny, suspicion and, as a result, have had more conditions imposed upon their accommodation and presence in Western European polities"[694].

As the case of Islam and France reveals, the issue of new religious movements is that of new religious presence. New religious and spiritual movements are only considered an issue when they appear to contradict the established social order on which a society rests. Even more so, they become an issue for a society when their intrinsic dynamics and patters contradict the established order. Therefore, the issue revolves less around their novelty, and more around their structural axiology. The principles on which they rest induce specific practices, of a ritualistic as well as merely behavioral nature, that may come at odds with the ones established in a given society. The problematization of a religion, or a religious or spiritual movement, thus starts from that point. From this perspective, religions and religious and spiritual movements drive the same type of questionings and the same type of issues as the 'traditional' religions which emerge in an area in which they have not historically evolved. It is, therefore, new religious presence itself, rather than religious movements, which may be subject to problematization, which may drive issues of a social nature for societies to consider and address. The more a religion or a spiritual movement is perceived to be far from a society's established social order—intended in its axiological dimension—, the more likely will they be subject to social contempt, problematization and legal restrictions. The case of Islam is not unique, even within the European realm; other religions also raise the same type of questioning. For example, similar issues emerge, more and more as times goes and globalization deepens, in relation to shamanic religions which bear the consumption of

[693] Within the French context, in this category fall such bills as the 2004 Bill prohibiting the Wearing of Signs or Attires Manifesting a Religious Affiliation in Primary, Secondary and High State Schools; the 2010 Bill Prohibiting the Dissimulation of the Face in Public Spaces; the 2021 Bill Favoring Respect for the Principles of the French Republic, commonly named 'law against separatism'.

[694] SEALY (T.), MODOOD (T.), « Western Europe and Australia: negotiating freedoms of religion », *Religion, State & Society*, 50:4, p. 387. *See*, also, KÄSEHAGE (N.), « No Country for Muslims?… », p. 59.

specific substances as core ritual practices[695]. Similar issues may also be emerging regarding the Pentecostal movement, as it tends to "consider [itself] responsible for the mission of (re-)christianization of Europe, which [it] regards as suffering from secularization/laicism"[696], etc.

The key issue seems constantly to be the congruence in between religion and society on the axiological dimension. The actual behavior and practices induced by the one or the other are visible elements that communicate to the external observer the values they materialize. That being said, the axiological difference refers to ways of leading the religious experience. It refers to the way individuals live their religious or spiritual experience, and how they address the diversity that society brings before them. This process does not circumscribe to religious movements, to individual believers or adepts of a determined spirituality. It also encompasses individuals who do not believe or adhere to a- or anti-religious beliefs, but nevertheless adhere to a specific conceptual system relating to life, death, and reality. For example: the New Atheists. In all cases, the more distance from the religious 'centre', the more social behaviors and state measures correlating negatively with religious freedom.

In this perspective, the state, as manager of the social dynamics that take place within its frontiers, is key for ensuring the maximum degree of religious freedom to individual believers. The state is, indeed, the first guarantor of the right to freedom of religion and belief. While also an international legal requirement, its duty to this regard may meet limitations which have to do with the very diversity that animate society.

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695 *See*, Part I, the comments on ECtHR, Third Section, Decision, 06/05/2014, *Alida Maria Fränklin-Beentjes and Ceflu-Luz Da Floresta v. the Netherlands*, Application n° 28167/07 and HRC, Views, 31/10/2007, *Prince v. South Africa*, communication n° 1474/2006.

696 VILAÇA (H), *ed.*, PACE (E.), *ed.*, INGER (F.), *ed.*, PETTERSSON (P.), *ed.*, *The Changing Soul of Europe. Religions and Migrations in Northern and Southern Europe*, Farnham, Ashgate Publishing Limited, 2014, p. 254. The Author even argues that this "phenomenon of 'reverse mission' is one of the most important challenges to European Christianity as Pentecostal churches represent the fastest growing religious group in the world, and act according to market rules which is uncomfortable to [both] historical churches as well as secular elites". *See*, *ibid*.

Chapter 3. State and Religious Diversity—the *Praxis*.

Dwelling on the state's relationship with a social phenomenon, a social movement, or any relevant issue for society amounts to analyzing how the state treats and relates to the latter, either through its positive law or through policy. Analyzing the relationship between the state and religion, accordingly, requires to dwell on the policy developed by the state regarding religion, and the legal ties linking the state and religious organizations, communities, and associations. That is, it is analyzing what kind of policy the state develops in relation to the latter, and the legal system it builds in order to interact with them. In other words, it amounts to examining state and Church relationships, as developed in a specific national context—that is, analyzing the policy and the legal ties linking the state and religious organizations as separate entities.

Thus, analyzing the state's treatment of religious diversity is analyzing how the state relates to the religions making society's religious landscape, either through the laws it enacts or through policies it develops. The aim of the analysis is systematizing the dynamics linking the state and the said religions, conceptualizing the global approaches to the latter and drawing classifications of the different systems and traditions observed in the area of managing religion.

Along with their concrete modalities, procedures and specific features, the modes of treating religion tend to have a specific impact on society's religions. In fact, from a global standpoint, the legal provisions or policy measures tend to be the first events which characterize a given system of state and Church relationship. The impact that these measures have on religions is what differentiates the global models adopted, and endow them with the nuances and specificities of their proper social context. In other words, when the laws and policies lead to characterizing a proper system of interaction between states and religions, the type of model tends rather to stem from the impact of the laws and policies on the social dimension. The model, thus, is a more global concept category which embodies different systems pertaining to a same family.

To consider state and Church relationships models from the standpoint of their impact on religions allows, thus, for a better systematization of the dynamics at work between society's religions and the state. It fosters a better conceptualization of the global approaches guiding a given system, and a clearer classification of the different systems observed and the tradition from which they stem (I).

While these traditions emerged and crystallized in specific socio-historical contexts, they seem to have given way, essentially, to two global models. The wide variety of systems observed around the globe tends to materialize a partition between two conceptions, two models of state and Church relationships systems. Two models which stem from specific conceptions revolving around the role of the state *per se*.

In addition, these traditions emerged and crystallized in specific socio-historical contexts. Thus, the gradual mutation of social dynamics, the shift from traditional to modern and post-modern social settings, and the effects of this shift on religiosity—at the social scale—tends to spark as a challenge for the systems traditionally adopted. In more simple words, today's diversity proves to be a challenge that calls for a reconfiguration of the systems in force in many societies around the globe (II).

I. State and Church relationships Systems: two blanket models.

State and Church relationships systems are socio-historical constructs. This feature makes each system, in a way, proper to the society in which it is enforced. More specifically in this perspective, state and Church relationships systems often prove to be adopted in a key moment of a society's history. In this way, they express the choice made by the governing elites of the time in the area of management of religion, and set the basic dynamics for the times to follow.

The fact that state and Church relationships systems are socio-historical constructs induces two elements. First, they tend to reflect the choice that society operated, through its governing elite, in order to face religion, religious communities and religious authorities—in one word: religious claims. Second, the process of their enactment tends to take into account features of

a sociological nature, meaning the social features proper to the society of the time. For example, they tend to be adopted in order to face specific religions—often those which enjoy a great power within society. Following, they provide for specific modalities, specific procedures which take into account the way these religions happen to be organized internally, either in communities of people, hierarchical congregations, formal institutional organizations… Also, they come to be infused with the stance that society intends to take regarding religion as a social fact. For example, the Turkish system, which intends to keep religions outside the public and social realms, tends to reflect an attitude of rejection towards religion. The French *Laïcité* system tends to reflect a similar attitude, despite its core essence of 'state neutrality'[697]. The system in force within the United Kingdom, by contrast, tends to reflect the reverse attitude of inclusion towards religion, and its involvement in institutional dynamics as much as possible.

In short, state and Church relationships, as institutional modes of organizing the religious phenomenon in society, tend to reveal a specific attitude taken by society and the state in relation to religion as a social fact. As such, they materialize different approaches to religion itself (1). And, although commanded by socio-historical reasons, the basic divide parting the current systems seems to rather lie in the very conception of the state, its prerogatives, its basic role in society, and its mandate regarding the latter's dynamics (2).

Confronted to today's religiosity and its characteristics, these two models and approaches to religion tend to show limits: the increase in religious diversity seems indeed to call for new kinds of treatment and regulation of religion in society.

1. A specific attitude towards religion.

In the area of state and Church relationships, a basic divide seems to part the existing systems around the world in two distinct models—or, better said, two distinct families of state and Church relationship systems (A). This divide reveals, in turn, what the state considers its proper realm, as opposed to that of society in a larger meaning (B).

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[697] *See*, *infra.* in the first section.

A. Two different families in the realm: When considering systems of state and Church relationships, a basic characteristic tends to spark the eye. It seems, indeed, that states either help religion to develop and express, favoring their involvement and presence in society; or they leave them to express and develop by their own means. Either states collaborate with religions, *via* the agents, communities, or authorities representing them; or they do not interact with religions, thus leaving them to evolve without further interference than necessary to maintain public order. In the first case, the ties linking states with religions and their representatives tend to be more or less developed, institutionalized and regulated. States provide for religious communities; they address, to a certain extent, the religious claims of individual believers; and they may even collaborate directly with religious authorities. In the second case, by contrast, states tend to avoid any contact with religions and religious authorities. In some instances, they even adopt specific regulations aimed at keeping religions away from the realm of the state.

United Kingdom and Poland, for example, fall under the first model. In the United Kingdom, the Anglican and the Presbyterian Churches' "entanglement with the apparatus of monarchy, parliament and state is close and complex"[698]. This means that both Churches are constitutionally recognized—respectively in England and Scotland[699]. Following, state authorities provide for these religions and their adepts in a variety of ways, such as funding chaplaincy in prisons and hospitals, making it a legal requirement for state schools to impart religious teaching, offering the possibility for the clergy of certain religious communities to solemnize marriages without the need for separate civil ceremonies, etc.[700]. Furthermore, similar benefits are also consented for other recognized religions, outside the constitutionally established Churches. In short, when a religion happens to be recognized by the state, the latter will tend to actively cooperate with it and provide for the needs of its adepts[701]. Likewise, following the same approach and sharing the same basic dichotomy between

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[698] BARBALET (J.), POSSAMAI (A.), TURNER (B. S.), *Religion and the State. A Comparative Sociology*, London, Anthem Press, 2011, p. 50.

[699] *Ibid*.

[700] *Ibid*.

[701] *Ibid.*, pp. 50-51.

historical and minority religions, the Polish system put in place by article 25 of the Constitution[702] aims at cooperating with religions and religious organizations. Based on such principles as state impartiality, and autonomy and independence of religious organizations, the Polish system establishes a link of cooperation between the state and religious organizations, through specific agreements concluded by the two entities: an international treaty concluded with the Holy See for the matters relating to the Catholic Church, and, for the remaining religious organizations and communities, specific agreements concluded between the representatives of religious organizations and the Council of Ministers[703]. Following, the Catholic Church counts with a guaranteed "right to execute its mission freely and publicly, including the exercise of jurisdiction and the management and administration of its affairs pursuant to canon law"[704]. That involves the inviolability of worship and burial sites, the right to use mass media in order to spread its message, to benefit from the status of public institution for schools of all levels established by the Church, the right to freely decide upon the appointment of teachers[705]… And, similarly, the other religious organizations which conclude agreements with the state tend to be granted the right to organize public worship and carry specific ritual practices such as pilgrimages and ritual slaughter, the right to establish and manage schools, organize charitable activities, etc.[706]. One key feature of the Polish system, by which it distinguishes from many other systems of the same model, lies in the fact that the Polish state does not provide for a public funding of any religion or religious

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[702] Article 25 of the Constitution of the Republic of Poland states: "1. Churches and other religious organizations shall have equal rights.
2. Public authorities in the Republic of Poland shall be impartial in matters of personal conviction, whether religious or philosophical, or in relation to outlooks on life, and shall ensure their freedom of expression within public life.
3. The relationship between the State and churches and other religious organizations shall be based on the principle of respect for their autonomy and the mutual independence of each in its own sphere, as well as on the principle of cooperation for the individual and the common good.
4. The relations between the Republic of Poland and the Roman Catholic Church shall be determined by international treaty concluded with the Holy See, and by statute.
5. The relations between the Republic of Poland and other Churches and religious organizations shall be determined by statutes adopted pursuant to agreements concluded between their appropriate representatives and the Council of Ministers".

[703] STANISZ (P.), *Religion and Law in Poland*, The Netherlands, Wolters Kluwer, 2020, Second Edition, pp. 34, 36-41. In fact, the author further explains that "[t]he arrangements agreed by the Council of Ministers and representatives of a religious organization can become a universally binding law only if an appropriate act is passed by the Parliament".

[704] *Ibid*., p. 60.

[705] *Ibid*., p. 61.

[706] *Ibid*., p. 63.

organization. The latter are free—and, by the same token, obliged—to manage the issue by themselves, independently[707].

On the contrary, the United States and France are topical examples of the second model, whereby religion does not get any special recognition or privilege by the state. More precisely, the Disestablishment clause of the United States' first amendment to the Constitution "prevents the federal state from showing favor towards any particular religion whilst at the same time protecting the right of its citizens to express their religion"[708]. That is, the state is not able, by the token of the first amendment, to provide for, or direct any regulation towards, any religion *per se*. Regulating religion falls outside state prerogatives by constitutional arrangement; religious communities and organizations do not benefit from any special measure or any right to carry their affairs. Consequently, the only regulations that may affect religion are those enacted for reasons of public order, as means of guaranteeing order and security or the correct functioning of public services such as the police for instance[709]. That is, the "only significant constraints applied by the state to religious freedom arise from concerns phrased in terms of public and national security"[710]. While religions cannot be affected *per se* by any regulation, those measures intended to safeguard public order may impact them, thus affecting them indirectly. It is on these grounds of public order that the United States' authorities, at both levels of government, have regulated some problematic aspects of religious practice[711], or the activity of such religious minorities as Mormons, Jehovah's Witnesses, Scientologists and Nation of Islam[712].

In other words, the disestablished model in force within the Constitution of the United States seems to leave religion outside the realm of the state and its regulatory authorities. Religion,

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[707] *Ibid*., p. 125.

[708] BARBALET (J.), POSSAMAI (A.), TURNER (B. S.), *Religion and the State. A Comparative Sociology*, London, Anthem Press, 2011, p. 48.

[709] *See*, for example, the developments on the Smith case *in* RICHARDSON (J. T.), *ed.*, *Regulating Religion. Case Studies From Around the Globe*, New York, Kluwer Academic/Plenum Publishers, 2004, pp. 535-551.

[710] BARBALET (J.), POSSAMAI (A.), TURNER (B. S.), *Religion and the State. A Comparative Sociology*, p. 49.

[711] RICHARDSON (J. T.), *ed.*, *Regulating Religion. Case Studies From Around the Globe*, pp. 535-551.

[712] BARBALET (J.), POSSAMAI (A.), TURNER (B. S.), *Religion and the State. A Comparative Sociology*, p. 49.

in this perspective, becomes strictly private, strictly confined to the realm of individual existence. Following, embracing religion, manifesting one's belonging or one's religious practices does not suffer any state interference, with the exception of those acts materializing a challenge to public order. In fact, following its conceptual premises, the model developed by the United States' Constitution "serves primarily to protect religions against the risk that the state might try to co-opt or control them"[713]. Individuals, thus, remain free in their embracement, obedience and religious practice; and even politicians, in the course of their activity, are able to make their religious belonging public and use it as political argument when addressing specific groups of voters[714].

The French *Laïcité* system, with its neutrality principle, is a variant of this same vision. More precisely, the system founded by 1905 Law on separation of Churches and State deprived the existing Churches and religious congregations from the official recognition granted to them by the former regime of 'Recognized Religions'—consequently forbidding, for example, their funding by public authorities[715]. In doing so, the said law enforced the religious neutrality of the state: a basic principle by which the state becomes unable to address religions through policy or regulation. The state being neutral, it is consequently unable to specifically address religions and either grant advantages or oppose restrictions to their development. Therefore, the unique duty of the state is to ensure public order; an order where individuals, whichever their religious belonging, would be able to live their religiosity.

When confronting the United States' and the French models, a major conceptual distinction sparks. As J. A Beckford phrases it, "[t]he main purpose of the separation of religions from the state in France is to protect the state against the risk of religious interference (…) [whereas] the separation in the United States serves primarily to protect religions against the

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[713] *Ibid*., p. 48.

[714] *Ibid*. p. 48-49. On the importance of religion in the politics of the United States, *see*, BRAMI (J.), « The Politics of Religion in the United States », *Revue LISA/LISA e-journal* [Online], Vol. IX, n°1, 2011.

[715] BAUBEROT (J.), « L'évolution de la laïcité en France : entre deux religions civiles », *Diversité urbaine*, 9(1), 2009, p. 12. Before 1905, the system in force was characterized, according to J. Baubérot, by a complex mixture of semi-officiality and state control: a Corcordat with the Holy See governed the relationships with the Catholic Church, whereas specific recognition arrangements were set for Protestantism and Judaism. *See*, *ibid.*, p. 11. The while of which made the 'Recognized Religions' regime.

risk that the state might try to co-opt or control them"[716]. But despite this essential conceptual difference, both models proceed from the same global intent to detach religion from the state on all dimensions of state activity. Both models proceed from the same global intent to detach religion from the state. On the one hand, they prevent that any particular religion comes to enjoy any particular influence on the state, its institutions and authorities. On the other hand, they prevent the state from favoring any particular religion, with the potential detrimental effects that that may cause to the others.

Despite their similarity, the conceptual dichotomy parting these two systems, which arises from their specific history regarding religion, may be the central cause of the specific evolution that each of these systems followed. The United States' model seems to have remained quite protective of the individual's rights to express their religiosity in private as well as in public[717]. By contrast, along the years and its application to specific factual cases by the Conseil d'Etat[718], empirical studies suggest that the French model has gradually been moving towards a hostile stance towards religion. For example, "Jonathan Fox's *World Survey of Religion and the State* claims that 'the French government tends to take a slightly negative

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[716] BARBALET (J.), POSSAMAI (A.), TURNER (B. S.), *Religion and the State. A Comparative Sociology*, p. 49.

[717] *Ibid*.

[718] In the French judicial system, the Conseil d'Etat is the highest Court in charge of administrative affairs. That is, its realm touches almost exclusively on the relationships that take place between individuals and state administrations, institutions and services. For this reason, the Conseil d'Etat is the central court where *Laïcité* is discussed; it is the primary organ where the principle is interpreted, for it is the primary forum where its application is discussed. The history of the Conseil d'Etat tends to show an evolution in the latter's stance on *Laïcité*. In the origins, its interpretation could be qualified as 'hostile' to religion. For example, in 1912, it rendered a judgement upholding the decision of the French Ministry preventing a candidate, who was a priest of the catholic Church, from sitting the 'Aggregation' exam for Philosophy. The said exam was destined, according to the Ministry and the Conseil d'Etat, to those candidates who were seeking to integrate Public Education as Philosophy teachers. In other words, due to his status of priest of the Catholic Church, Mr. Bouteyre could not sit an exam that aims to recruit teachers for public education. *See*, CE, 10/05/1912, *Abbé Bouteyre*, Application n° 46027. His status, as priest of the Catholic Church, made him, according to the Conseil d'Etat, unfit for public education. The aim, thus, of *Laïcité* as a system was to keep religion away from the state instead of assuring that the latter be neutral to it. However, this stance towards religion underwent changes and evolutions through time. Recently, the Conseil d'Etat issued two decisions on the presence of Christmas cribs within public administrations, which show a variation from the classic hostility described *supra*. More precisely, after public administrations decided to expose Christmas cribs within the administrations during the feasts, some organizations decided to lodge a complaint against the said administrations, before the French courts, claiming a breach of the *Laïcité* principle. By two decisions, the Conseil d'Etat declared the complaints inadmissible, for the said Christmas cribs had multiple meanings, and could therefore be of cultural, artistic, or festive in nature in spite of the religious signification that they manifest. *See*, CE, Ass., 09/11/2016, *Fédération départementale des libres penseurs de Seine-et-Marne*, Application n° 395122; CE, Ass., 09/11/2016, *Fédération de la libre pensée de Vendée*, Application n° 395223. The Conseil d'Etat's 'hostility' towards religion as such has thus evolved in time—and may even vary depending on the religion at stake.

view of religion' (…) and that its position is best categorized as 'hostile' to religion"[719]. A hostility that "culminated in the law of 15 March 2004 (significantly named 'Laïcité law') forbidding the wearing of 'conspicuous' religious symbols in public schools"[720].

As the four models considered above tend to indicate, the basic divide that parts the existing state and Church relationship systems into two families revolves around particular considerations on the role of the state in society. At the heart of cooperating systems, as the Polish and the British, lies the idea of a state providing for religions and the needs of religious communities. Conversely, among the founding premises of the second model seems to be the idea that religions are best placed to provide for themselves—any association between the state and a religion may yield in causing prejudice to others. Hence the separation in between religions and the state—in between the public and the private spheres. The first type of systems, such as the ones in force in the United Kingdom and Poland, includes religions in the public domain. The second type, characterized by France and the United States, tends, by contrast, to maintain them in the private sphere.

B. 'Public sphere' and 'visible dimension': Delimiting the 'private' and the 'public' is key when discussing state and Church relationships. Yet, the distinction between the two does not appear to be clearly established. The frontier in between the 'public' and the 'private' seems to be porous, blurry; and even its oppositeness as a scientific concept seems to come into question. As J. Casanova argues, "[t]here are so many different and outright contradictory ways in which the terms 'public' and 'private' are being used in everyday language as well as in social-science terminology that one may only wonder why no call has been heard yet to drop those terms altogether"[721].

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[719] BARBALET (J.), POSSAMAI (A.), TURNER (B. S.), *Religion and the State. A Comparative Sociology*, pp. 45-46.

[720] The original French wording reads as follows: "cette hostilité aboutit à la loi du 15 mars 2004 (significativement appelée 'loi de laïcité') qui interdit le port de signes religieux 'ostensibles' à l'école publique". *See*, BAUBEROT (J.), « L'évolution de la laïcité en France : entre deux religions civiles », *Diversité urbaine*, 9(1), 2009, p. 15.

[721] CASANOVA (J.), « Private and Public Religions », *Social Research*, Vol. 59, No. 1, 1992, p. 20.

In sociological scholarship, the "public sphere can be defined as an open social arena in which a significant part of the population of a given society participates, either passively or actively. This arena (or sphere) is dedicated to the gathering, production and distribution of information and opinions and is shaped by the presence of mass media"[722]. In other words, it is a specific space of society where people meet in order to communicate ideas and information on a variety of subjects relating to the affairs of their polity. A space of communication and expression, where individual members of a given society communicate their ideas to the others and receive information from them. Following, it is not circumscribed to any specific social forum or space or institution. That is, as V. Kaul explains, the public sphere in social-sciences scholarship "cannot be reduced to the sole institutions of the political system, but involves civil society and all public forums of political exchange, discussion and clarification"[723]. In fact, sociological scholarship seems to conceive of the public sphere as the "sphere of democratic will formation"[724]. Consequently, it can be equated with the state or its institutions such as Parliamentary assemblies or state administrations. It can also cover the media—with special relevance to mass media. It can also cover public places such as the city streets. And it can even apply to those closed spaces intended for special events or mere socialization such as conference rooms and other types of socialization premises. Along these lines, the 'public' sphere of society appears to be the space, within the latter, where individuals communicate with their peers. Given the communication can be of different sorts, and can follow different canals such as verbal statements, behaviors and practices or clothing, the sphere where the said communication takes place can include any setting where individuals communicate on a given—publicly relevant—topic. In fact, the public dimension, according to social scholarship, seems to be the visible dimension of society.

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[722] KÖHRSEN (J.), « How religious is the public sphere? A critical stance on the debate about public religion and post-secularity », *Acta Sociologica*, 55(3), 2012, p. 274.

[723] KAUL (V.), « Religion, rights and the public sphere », *Philosophy and Social Criticism*, Vol. 43(4-5), 2017, p. 377. *See*, also, KÖHRSEN (J.), « How religious is the public sphere? A critical stance on the debate about public religion and post-secularity », *Acta Sociologica*, 55(3), 2012, p. 274, where the author states that "[t]he public sphere can be defined as an open social arena in which a significant part of the population of a society participates passively or actively. This arena (or sphere) is dedicated to the gathering, production and distribution of information and opinions and is shaped by the presence of mass media (…). Modern societies embrace a variety of public and media spheres (…). The most visible and crucial public sphere is perhaps the political public sphere. Its debates can potentially affect the whole population of a society and intermediate between the citizens of a society and its political system".

[724] KAUL (V.), « Religion, rights and the public sphere », *Philosophy and Social Criticism*, Vol. 43(4-5), 2017, p. 377.

Since the ‘public sphere’ is a space for communication and exchanges on the affairs of the *politeia*, it is the sphere of society which allows individuals to expose their views on those subjects which are relevant to every other member of society—regardless of the settings in which the process takes place. Therefore, it is the visible sphere of society: what is ‘public’, for society, seems to be that which is ‘visible’ for external observers. Hence the Habermasian statement that a “portion of the public sphere comes into being in every conversation in which private individuals assemble to form a public body”[725]. Whether there be an express intent for the body to be of a public nature or not, the very ideas that are expressed within the latter, through wording or behavior, turn the body into a public one when they appear to be relevant for the life in the polity. In this perspective, even friendly gatherings in closed spaces become part of the public spheres when the topics animating the gathering are relevant for the life in society.

Such considerations around the ‘public’ and the ‘private’—the latter’s *opposé*—paves the way for such theories as J. Casanova’s ‘deprivatization’. In his observation of religion, at times where the secularization theory was still the main paradigm explaining religion in society, J. Casanova put forth “the fact that religious traditions throughout the world [were] refusing to accept the marginal and privatized role which theories of modernity as well as theories of secularization had reserved for them”[726]. That is, contrary to the movement of secularization which was pushing it to the private—meaning the invisible and strictly individual—sphere of society, religion was observed to be taking an increasingly visible public role. Religious behavior was observable, religious practices were developing[727], religious events and gatherings were observed to be taking place in all societies around the world. Hence religion was ‘de-privatized’, continuously integrating the public—visible—sphere of society.

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[725] HABERMAS (J.), LENNOX (S.), LENNOX (F.), « The Public Sphere: An Encyclopedia Article (1964) », *New German Critique*, No. 3, 1974, p. 49.

[726] CASANOVA (J.), *ed.*, *Public Religions in the Modern World*, Chicago, University of Chicago Press, 1994, p. 5.

[727] That is, the practices and behaviors that individuals execute in their daily life, when relating to each other, when interacting with each other, when being in premises exposing them to the observations of their peers.

Based on this distinction, the 'public' sphere seems to be the sphere of society where political communication between individuals can take place. On the contrary, the private sphere becomes that of individual life, where individuals behave outside the reach of their peers. That is, the sphere where individuals can 'be' without being seen. A sphere that exceeds the *forum internum* strictly speaking; but which does not expose individuals, their ideas or behavior, to their fellow members of society. Applied to the religious dimension, the distinction yields in distinguishing between a forum where individuals are able to express their religious ideas and manifest their religious practices without being exposed to the external eye, and another forum where the latter eye perceives their ideas and behavior. Following this dichotomy, though, religious practices and behaviors are only partially private. In fact, most of the religious practices are designed to be executed outside the narrow sphere of individual life. Pilgrimages, animal slaughter, wearing of special clothes such as islamic headscarves or skullcaps or turbans, and processions all appear to be practices that can only be performed in a visible way. That is, they can only be lead in public. That is why J. Casanova highlighted an inherent "paradox"[728] in the distinction between the public and the private spheres. For him, "[o]f one thing (…) we can be certain. Religion cannot easily be encased in a strictly private individual sphere"[729].

By contrast to the sociological perspective, law tends to conceive of the 'public' sphere as the sole realm of the state and its institutions. Indeed, law tends to conceive of two basic areas. On the one hand, a private sphere encompassing individuals' interests, erected on principles of free individual action and structured through the specific interactions of individuals in between themselves[730]. On the other hand, it conceives of another dimension concerned exclusively with general interest, where the management of society takes place, and which abides by the logics of authority and legitimate coercion that stem from state prerogatives

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[728] In fact, according to J. Casanova, the distinction in between public and private proves to be paradoxical when confronted with sociological findings about religion. He states indeed that "one is confronted with the seeming paradox that, while religion in the modern world continues to become ever more privatized, one is also witnessing simultaneously what appears to be a process of 'deprivatization' of religion". *See*, CASANOVA (J.), « Private and Public Religions », *Social Research*, Vol. 59, No. 1, 1992, p. 19.

[729] CASANOVA (J.), « Private and Public Religions », p. 57.

[730] CHEVALLIER (J.), « À quoi sert la distinction droit public/droit privé ? », *in* BAILLEUX (A.), *ed*., BERNARD (D.), *ed*., Van MEERBEECK (J.), *ed*., *Distinction (Droit) Public/(Droit) Privé. Brouillages, innovations et influences croisées*, Bruxelles, Presses de l'Université Saint-Louis, 2022, para. 1.

exclusively[731]. It conceives of one area composed of the rules and laws regulating the interactions in between individuals; and another one regulating the dynamics of state institutions and the relationships between the latter and individuals. The law conceives of public law and private law.

From this dichotomy results that the public sphere—the sphere of application of public law—is formed of the state, its institutions and administrative bodies. In other words, the public sphere becomes, in this view, the sphere formed of state institutions and its administrative bodies and services. It becomes the sphere of institutional dynamics, the ones which animate the interactions between state institutions and administrations, and the ones taking place between the latter and the individuals. Following, the procedures regulating the activity of elected representatives, the rules applicable to public schools, hospitals, and other state-owned services all for part of this dimension. Henceforth, the individuals engaging in the public sphere are those who engage with state administration or public institutions, as users of the latter for example.

However, even in the legal realm, the distinction does not seem to be adamant. When elaborated, the law aims at regulating specific realities. The lawmakers take these realities into account when applying or creating any law or regulation. Therefore, the social characteristics of the reality to regulate appear to be key when it comes to elaborating the legal structures by which the said reality needs to abide. For example, state authorities usually receive claims for funding by religious communities before providing the funding. In other words, it is after identifying a need for funding that states recognizing religious communities and organizations proceed with procedures that allow for the said communities to perceive public fundings.

In other words, the regulations enacted by state authorities and lawmakers are enacted with the aim of facing specific realities taking place within the polity. Being that so, the enacted laws and regulations bear sociological dimensions—at least to a certain extent. In the lawmaking and regulatory processes, enacting laws or regulations requires lawmakers and

[731] *Ibid*.

state authorities to take into account, *a priori*, the observable dynamics of the phenomena to regulate. The elaborated laws and regulations usually prove to be responses to these phenomena and their observable dynamics. For example, French 2004 law prohibiting the wearing of religious signs and garments in public schools was a (legal) response to the multiplication of the latter within school premises, especially after the 1989 controversy. The interdiction at the heart of *Leyla Sahin v. Turkey* was of the same kind, as it was motivated by the state's perception that the latter was used for political reasons within public universities[732].

Consequently, the 'public' expression of these phenomena is key for laws and regulations to be enacted. That is, their visibility for society and state authorities is key for the latter to enact the corresponding laws and regulations. It provides state authorities with the concrete characteristics and nuances of the phenomena to regulate, which are the required conditions for state authorities to exercise their prerogatives. That is how the 'sociological' public sphere comes to interact with the 'legal' public sphere, thus yielding in a specific dimension where the two realms merge. The dialectics thus taking place between the elaboration of the law and the field reality materializes a specific 'public' dimension encompassing a part of the visible dimension of society and a part of the realm of state authorities. A dimension which encompasses the two latter dimensions—the sociological and the legal—and, at the same time, comprises them into one larger dimension distinct from each of them.

What is intended by the public sphere, therefore, is this specific dimension where social matters interact with the state. In other words, it is the sphere which is related to state affairs —thus exceeding its administration and institutions but nevertheless narrower than the 'visible' sphere of society. The public sphere seems to be the sphere which embraces the visible aspects of society which are relevant for the life in the polity, and henceforth relevant for the state, its institutions and authorities. In other words, it tends to be the sphere of those realities, subjects, behaviors that trigger the prerogatives of the state as organizer of life in society. In fact, it tends to refer to the *res publica*, that is, to the affairs of the realm, those which belong to the general public, for their relevance to society, and to the state, intended as regulator of the latter. Whether essentially social or exclusively institutional, any reality that

[732] *Leyla Şahin v. Turkey*, Application n° 44774/98, para. 115.

belongs to the affairs of the realm belongs to the public sphere—it belongs to the *res publica* of the society considered.

By contrast, the 'private' sphere of society becomes, *a contrario*, the sphere where individuals behave, express themselves and carry practices that are not relevant for the society or the state. More precisely, it is the sphere composed of individual private life, which encompasses any act that individuals proceed to, but which do not form part of any social dynamic. Whether visible or invisible to the general public, these acts are not put to the agenda by society or the state, nor do they drive any regulatory intent from the latter.

Accordingly, in religious matters, the public aspect of religious freedom and state and Church relationships appears to be composed of any aspect of the latter that belongs to the realm of the polity, and thus triggers the prerogatives of the state. In more simple words, the public aspects of religious freedom and state and Church relationships appear to be those aspects which are relevant for society, at a particular time, and accordingly trigger the regulatory powers of state authorities. State and Church relationships systems, specifically, tend to receive a special configuration according to the concrete socio-historical dynamics which bring religion in the public sphere at a given time. That is what makes them historical constructs. That is the primary source of the diversity of systems which is observable today around the world.

What is considered as 'public' and 'private' by a given system is thus proper to the system itself, and the particular socio-historical features which presided over its establishment. As stated *supra*, "[t]he main purpose of the separation of religions from the state in France [for example] is to protect the state against the risk of religious interference"[733]. From a historical perspective, religion has always been an important factor for French society, and France has been an important entity for the Catholic Church along its history. In fact, France tends to be qualified as "the Church's eldest daughter"[734]—even though quite rebellious a daughter, in actual facts, given the tumults that have animated its relationships with the Church along the

[733] BARBALET (J.), POSSAMAI (A.), TURNER (B. S.), *Religion and the State. A Comparative Sociology*, p. 49.

[734] JOUBERT (B.), « La France et le Saint-Siège », *Outre-Terre*, 2015/4 (N° 45), pp. 183-184.

centuries[735]. Benefiting from their importance within French society and for the latter's individual members, religious authorities tended to seek influence on French successive governments and state institutions, from the most ancient times. Therefore, the 1905 Law on the separation of Churches and state was enacted, as an attempt to neutralize religion by making the state religiously neutral[736]. The corresponding state perspective on religion is that religion does not exist; what do exist are ideologies in practice, even if the general public refers to them as 'religions'. The regulation of the said ideologies abides by considerations of public order exclusively. Hence the public sphere, in this perspective, encompasses the claims and practices and behaviors that call for state intervention for public order reasons exclusively.

Similarly, "the separation in the United States serves primarily to protect religions against the risk that the state might try to co-opt or control them"[737]. That is, the system engendered by the First Amendment, and its Disestablishment clause, drives the focus towards the protection of the individual's rights to express their religiosity[738], free from any coercion by state authorities. It leads the public sphere to encompass only those religious practices and behaviors that call for specific regulations and protection from state interference[739].

In systems recognizing religions and religious communities, such as the Polish and the British systems, the public sphere includes all religious manifestations brought forth for the state to

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[735] *Ibid*.

[736] The system thus put in place aimed at neutralizing religion at the roots by retrieving any religious connotation from any behavior or practice, including from religious manifestations. The intent was to ensure that any religious manifestation, behavior or practice, be considered a social manifestation, behavior or practice, proper to the individual or the group of individuals that proceed to it. In fact, the *Laïcité* equated religions with their core essence, considering them as mere philosophies of life. Thus equal to any other philosophy of life, their manifestations could only be considered from the perspective of public order. For example, during the parliamentary debates prior to the adoption of the 1905 Law, the issue of religious clothing sparked into the debates. Some members of the Assemblée Nationale proposed that religious clothing be wore, by priests, during religious ceremonies exclusively; religious officials and personnel would have to be dressed otherwise in other circumstances. But, instead, the choice was made not to impose any special measure on that, and consider the religious clothing at stake—a cassock—be considered an attire alike any other. That is, for the religiously neutral state, that the cassock be equivalent to any other dress that exists in society. *See*, BRIAND (A.), *La Séparation. Discussion de la Loi*, Paris, Bibliothèque Charpentier, 1908, pp. 298-300. The later application of the Law by the courts seems, to a certain extent, to have parted ways with this perspective.

[737] BARBALET (J.), POSSAMAI (A.), TURNER (B. S.), *Religion and the State. A Comparative Sociology*, p. 49.

[738] *Ibid*.

[739] *See*, RICHARDSON (J. T.), *ed.*, *Regulating Religion. Case Studies From Around the Globe*, pp. 535-551.

consider—either for reasons of public order, for organizing public services, or for any further need of the religious community considered. In these systems, indeed, the basic underlying idea seems to be that, among the other streams and tendencies animating the polity, religions are specific agents which call for a specific regulation and management.

Hence, on the religious dimension, the public sphere appears to be made of those religious claims that call for an action of the state—either through policy or law. Any social claim that requires the intervention of the state, through law or policy making, is part of the public sphere. The other manifestations and visible aspects which do not bear any relevance for state action remain in the private sphere, even if made visible to the general public. For example, the religious dress that does not call for state regulation, such as religious covering in countries like the United Kingdom, remain components of the private sphere of individuals even when they are visible to the general public. By contrast, the same religious behavior is part of the public sphere in countries such as France and Turkey, given they are put to the agenda by the state and hence call for its regulatory intervention. The public sphere, indeed, seems to be composed of acts that require a positive intervention of state authorities, for their relevance to the general polity. That is how it tends to differ from one country to another: according to socio-historical features presiding over their enactment and establishment, different systems involve the action of the state on religion through specific dimensions and in different ways. In other words, religion is only relevant for state authorities according to the specific socio-historical dynamics that the said state appears to have had regarding religion. These socio-historical dynamics appear to be key factors in the choice to make, by state authorities, on what system to opt for when interacting with religion. Hence they participate in defining the realm of the public and the private sphere, and accordingly in setting the frontier between the two. The fact that the public and private spheres are a combination of two criteria —namely, relevance for society, and relevance for state action—, they tend to vary from one polity to another, from one state to another, according to the socio-historical dynamics of the latter. Therefore, the distinction in between the two calls for an empirical field examination, adjusted to each specific country. Hence the blur in between the two spheres that social sciences tend to put forth[740]. In their effort to distinguishing the two spheres in an adamantly

[740] CASANOVA (J.), « Private and Public Religions ».

universal fashion, a contextual blur ends-up covering the whole definition area. Social sciences tend to try and amount to universal definitions applicable to each and very society, when, in fact, the socio historical features of each society tend to delimit a specific frontier of its own.

Also, besides their impact on religion, on the treatment of religion, and on the frontier between the public and the private spheres of society, the two global models of state and Church relationships systems that have been brought forth above proceed from a distinct conception regarding the role of the state as manager of social life. In other words, as has been argued in the above lines, each type of system leads to a specific approach on religion. Stemming from distinct conceptions regarding the realm of religion and that the state, they lead states to have quite different approaches on religion. In short, they proceed from specific philosophical prisms when considering religion. And, in addition, they also seem to proceed from a specific philosophical prism regarding the role of the state as a manager of society.

2. A specific role for the state.

Bearing the monopoly of the use of legitimate coercion, state authorities consequently hold the exclusive power to enact rules for every member of society to follow. They hold the exclusive power to impose punishments on those members who contravene the rules. They are, in short, the exclusive guarantors of social order.

Therefore, the two observable models of state and Church relationships systems also materialize the way state authorities concretely exercise their mandate of social regulation. In that, they seem to proceed from a larger consideration that concerns the role of the state when facing social diversity.

Indeed, the two types of state and Church relationships models are, in fact, two ways of managing religious plurality. They aim at including—in different amplitudes—the religious diversity into a framework that allows religions to live, develop, express, and religious communities to fulfill the needs of their adherents. In other words, they seem to be, on different scales, the expressions of political Liberalism regarding religious diversity. That is,

they seem to represent two versions, two approaches to Liberalism as they tend to precisely materialize two conceptions of state liberalism regarding religion.

Both models seek to include the religious diversity that composes society. The difference in between them lies in the fact that one model relies on positive actions conducted by the state for the inclusion to take place in actual facts, whereas the other seeks to maintain state authorities outside the evolutions and dynamics of society. In other words, the first model, of which the British and the Polish systems are two illustrations, tends to engage the state into the religious dynamics animating society. It tends to include the state and its authorities into these dynamics, with the idea that, as representatives of public authority, their mandate is to provide for the needs of the religious communities composing society. Therefore, the systems composing this model of state and Church relationships rely on the basic consideration that the state's role in society is to provide for the communities composing the latter through positive actions addressing their needs. Such models seem to derive from a particular conception of minorities and minority rights as such, which does not prescribe to religious minorities only. Rather, it is a mode of considering minority rights issues at large[741].

By contrast, the model provided by the United States Constitution and 1905 French Law seeks rather to maintain the state outside social dynamics. It seeks to leave religions, believers and religious communities free to evolve, manifest, and engage with society as they intend themselves and according to their own views on the latter. The state, in this perspective, is circumscribed to the most basic role of guarantor of public order. In other words, the state leaves religious communities and the believers composing them free to evolve in society, in

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[741] For example, it is the approach developed by W. Kymlicka in his work. *See*, *inter alia*, KYMLICKA (W.), « Categorizing Groups, Categorizing States: Theorizing Minority Rights in a World of Deep Diversity », *Ethics & International Affairs*, Volume 23, Issue 4, 2010, p. 373; KYMLICKA (W.), *Multicultural Citizenship*, New York, Oxford University Press, 1996, 296 p. In addition, the author puts forth the connection of this perspective on minorities and minority rights with a particular conception of the state and its duty in society. Indeed, as he states, within the framework of recognizing minorities, "[t]he state is responsible for ensuring fair background conditions, including institutional conditions relating to the public recognition of language and culture, but individuals are free to make choices from that background, and are responsible for considering the prospective costs and benefits of their choices (…). [W]e can only identify who are 'minorities'—if we first have some workable account of the state, and how a state comes legitimately to govern particular peoples and territories. And this in turn requires addressing both general theoretical questions about the moral foundations of statehood —that is, how states legitimate their rule through ideas of popular sovereignty, territorial rights, and national self-determination—as well as more specific historical questions about how any particular state asserts rule over particular persons and territories". *See*, KYMLICKA (W.), « Liberal Multiculturalism as a Political Theory of State–Minority Relations », *Political Theory*, Vol. 46(1), 2018, pp. 81-82.

organizing their life and pursuing their needs as they see it fit themselves. The unique limit to their action is public order, whose respect it is the duty of the state to ensure. Therefore, this model of state and Church relationships seems to proceed from the basic conception of the state as guarantor of public order exclusively. It proceeds from the idea that the role of the state in society is to ensure that every component of the latter—individual or community—is able to fulfill its needs and develop its existence according to its proper views and cosmovision.

Thus, these two models of state and Church relationships seem to stem from two alternative conceptions of the state itself. The first poses the state as part and parcel of the social—and, by way of consequence, also the cultural—dynamics of society, in spite of the power that it has on individuals and communities. The second views the state as a regulatory agent exclusively, whose duty it is to ensure the respect of public order. The state, thus, leaves the socio-cultural developments of society for individuals and communities to run, without further concern than that of making sure they do not cause prejudice to public order in their progression. In the first perspective, the state is considered an active agent of social developments. In the second, it is considered to belong to a distinct sphere than that of the socio-cultural sphere of society. The state's role, in this latter perspective, is to set the global framework within which all members of society be able to exist and develop, individuals and communities alike. In other words, the duty of the state remains that of setting the basic, and global, regulatory order in force within society. The order which preserves every entity composing the latter, at the same time as allowing every other to freely express and develop.

In conclusion, it appears that the two models of state and Church relationships systems stem from different conceptual premises revolving around the state and the role that the latter ought to have in society. Nevertheless, despite their distinctions and proper rationales, both models and the systems that they lead to, as observed around the world, tend to face an increasingly similar reality. Indeed, as explained in the previous chapters, the spiritualization of religiosity drives an important individualization of the religious lived experience. Following, it also increases the religious diversity of society to a high degree. Thus, in spite of their specific approaches to religion, the state and minority issues; despite their proper rationale and

philosophical underpinnings; and regardless of the specific socio-historical features that presided over their enactment, all the existing state and Church relationships systems have to address an increasing degree of religious diversity and the corresponding issues that stem from this state of facts.

II. Two models facing identical social challenges.

Despite the distinctions they bear, both models appear to be facing the same social dynamics. Whether they recognize minorities or not; regardless of the extent to which they recognize religious communities; whether they provide for religious communities or leave them to evolve outside the state realm; all state and Church relationships systems around the world seem to be confronted to a strong increase in religious diversity. As discussed *supra*[742], the spiritualization of the religious experience, its individualization, and the globalization streams transporting ideas, information, and people throughout the world are direct factors causing the increase of religious diversity in all domestic societies around the globe. Indeed, individuals tend to adjust their beliefs and practice to their individuality; and, accordingly, new religions and new religious behaviors appear in societies where they did not exist, in societies whose established social order they may even challenge. In this perspective, the challenge they may represent involves both society itself and the state, in its capacity to include them through law, specific regulations or policies.

Diversity, as such, is not a new phenomenon, even on the religious dimension. Across the times and centuries, groups of people sharing common features of a sociological, cultural, anthropological, ethnic, linguistic or religious kind have always existed. In other words, world societies have always counted with specific groups of people who distinguish themselves with a proper language, culture, religion or ethnic characteristics. Even more so, such groups were often considered a challenge by governing authorities—that is, as actual or potential threats to the unity of the realm. It is, in fact, the tensions between ruling authorities and such minorities that gave way to 'minority rights' as they are intended today[743].

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[742] *See*, Part II—Chapter 1. Patterns of postmodern Religiosity.

[743] PREECE (J. J.), « Minority Rights in Europe: From Westphalia to Helsinki », *Review of International Studies*, Vol. 23, No. 1, 1997, pp. 75-92.

Therefore, problematizing minorities and diversity is not a new phenomenon; ruling authorities have always put minorities and diversity to the agenda. The novelty of contemporary religious diversity, though, resides in two aspects. First, its degree: as explained in the previous sections, the individualization of religiosity leads individuals to elaborate themselves their religious beliefs and religious practices, picked among the panel of ideas, cosmologies and practices they come across with. Second, the beliefs thus embraced, and the practices the latter convey, may clash with the premises of society—its established social order—to an extent that may supersede the capacity of the state to include them within the dynamics of the latter.

With these new aspects, contemporary religious diversity poses as a challenge for both models of state and Church relationships systems, and on three different levels. First, as explained, new religious practices can clash with the established social order within a given polity. This clash may, in turn, result into state restrictions against the said religions or the practices they convey[744]. Indeed, practices and behaviors that contravene the established social order of a given society tend to be subject to limitation and restriction regardless of the model considered. The systems that recognize minorities and religious communities can aim at these specific communities or religions[745]. By contrast, those systems which do not recognize minorities and religious communities still consider religious behaviors as facts taking place within society. That is, without due regard to their religious substance, they do consider them as individual behaviors—as facts taking place within society. In this vein, they also consider and value them from the perspective of public order—therefore subjecting them to regulation[746].

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[744] As examples, *see*, AComHR, Decision, 07/12/2004, *Garreth Anver Prince / South Africa*, 255/02; HRC, Views, 31/10/2007, *Prince v. South Africa*, communication n° 1474/2006; ECtHR, Third Section, Decision, 06/05/2014, *Alida Maria Fränklin-Beentjes and Ceflu-Luz Da Floresta v. the Netherlands*, Application n° 28167/07.

[745] In this perspective tend to fall such state treatments and corresponding regulations of Falun Gong and Islam in China, of the Seventh Day Adventist community in the United States, of Scientology in some European countries, and of religious movements qualified as 'cults' or 'sects'. *See*, RICHARDSON (J. T.), *ed.*, *Regulating Religion. Case Studies From Around the Globe*, New York, Kluwer Academic/Plenum Publishers, 2004, 578 p. Also, *inter alia*, YANG (F.), *ed.*, TAMNEY (J. B.), *ed.*, *State, Market, and Religions in Chinese Societies*, Leiden, Brill, 2005, 258 p.; WRIGHT (S. A.), *ed.*, RICHARDSON (J. T.), *ed.*, *Saints under Siege. The Texas State Raid on the Fundamentalist Latter Day Saints*, New York, New York University Press, 2011, 270 p.

[746] The application of the French system has given way to key illustrations of this tendency. *See infra*.

Second, the degree of diversity that contemporary religiosity reaches has accentuated the number of religious communities present within the social ambit. In this perspective, 'including' the said communities or providing for their needs through specific positive state actions requires an increasing intervention of the latter and its institutions. In other words, providing for religious communities tends to be an increasing burden for the state, its authorities and its services. The distinctions of the said communities, the needs they may express may become a disproportionate burden on the state.

Eventually, in line with globalization streams and the evolution of society, religious diversity is in a constant mutating process. Religious communities grow and atrophy; they surge and decline; their needs spark and shut off according to the characteristics of the social context. In this vein, providing for religious communities requires that state authorities be constantly up to date with social evolutions. That is, it appears that state services, for example, ought to be flexible enough in order to suitably adjust to the observed diversity, and include behaviors that do not correspond to the order they were meant to face originally.

These three challenges exist for both models of state and Church relationships. Both models convey a different type of action regarding minorities and religious communities. On the one hand, systems recognizing the said communities tend to set criteria for the recognition to be granted, thus leaving some religious communities without recognition and consequently not providing for them. In fact, the criteria cause a selection of which communities the state would provide for. For example, albeit the United Kingdom's system does not provide for specific characteristics to be fulfilled in order for a religious community to be legally recognized[747], "several legal mechanisms (…) require religious groups to register [in order] to acquire a certain legal status" likely to give them access to specific benefits and privileges[748]. Furthermore, while religious communities tend to be granted the status of Unincorporated Associations and legally treated as voluntary associations, "the Church of England and the Church of Scotland (and to a lesser extent the Church in Wales) also have some recognition in

[747] HILL (M.), SANDBERG (R.), DOE (N.), *Religion and Law in the United Kingdom*, Alphen aan den Rijn, Kluwer Law International, 2014, p. 69.

[748] *Ibid.*

Public Law"[749]. Consequently, they enjoy additional privileges that other communities do not enjoy, for example in relation to state's institutions[750]. In a similar fashion, the Polish system subjects the relations between the state and the Catholic Church to the Concordat concluded with the Holy See; and the relationships of the state and the other churches and religious organizations are devolved to "statutes adopted pursuant to agreements concluded between their appropriate representatives and the Council of Ministers"[751]. Consequently, the seemingly high number of registered churches and religious associations represents, in actual facts, only a few religions[752]. Many religions, such as New Religious Movements or ancient pagan religions for example, operate as private associations[753]. On the other hand, systems which do not recognize religions may ignore the religious needs of specific communities or believers. That is, religious communities and their potential needs are irrelevant for these systems. When enacting regulations aimed at safeguarding public order by restricting specific acts, these systems do not consider whether the acts result from a religious practice or a specific religious requirement. Therefore, they may amount to causing prejudice to the communities or the individual believers considered, given that state services and authorities do not adjust to the communities and practices at stake. For example, France's regulations regarding public order and health, or even social values and civility, have often proved to have a direct—negative—impact on the condition of believers and their religious practices[754].

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[749] *Ibid.*, p. 74.

[750] *Ibid.*, pp. 79-80, 106-113.

[751] Constitution of The Republic of Poland, Article 25-4.

[752] "As of 1 October 2014, 158 Churches and religious associations were registered in Poland (in the register of the Ministry of Administration and Digitalization). A further 14 Churches and religious associations operated by way of separate statutes; to this number, one must add the Roman Catholic Church, which operates on the basis of an international agreement (concordat). Hence, the total number amounts to 173 (1 + 14 + 158). It is difficult to estimate the number of faith communities and parareligious groups operating in Poland outside the register kept by the Ministry, which have adopted a different legal form (e.g., as associations, foundations, or limited liability companies). Many such groups function as informal or social groups, exercising the right stemming from the general constitutional provision speaking of the freedom of religion". *See*, RAMET (S. P.), *ed*., BOROWIK (I.), *ed*., *Religion, Politics, and Values in Poland. Continuity and Change Since 1989*, New York, Palgrave Macmillan, 2017, p. 161.

[753] *Ibid*., pp. 175-177.

[754] ECtHR, Grand Chamber, Judgment, 01/07/2014, *S.A.S. v. France*, Application n° 43835/11; HRC, Views, 19/07/2013, *Mann Singh v. France*, communication n° 1928/2010; HRC, Inadmissibility Decision, *A. P. v. Federation of Russia*, communication n° 1857/2008; HRC, Views, 01/11/2012, *Singh v. France*, communication n° 1852/2008; HRC, Views, 22/07/2011, *Singh v. France*, communication n° 1876/2009. Also, RICHARDSON (J. T.), *ed.*, *Regulating Religion. Case Studies From Around the Globe*, New York, Kluwer Academic/Plenum Publishers, 2004, pp. 27-84.

In both cases, the right to religious freedom of specific believers suffers a negative impact. Whether due to the idea of public order enforced by state authorities, to the established social order and the specific dynamics this idea tends to foster in society, or due to the legal provisions and arrangements, prejudices arise.

As explained *supra*[755], the construction of the religious experience starts indeed at the individual level. With individualism as processing driver, religious diversity reaches extents which translate into a particular burden for state authorities to tackle. Following, to impose on states an obligation to provide for every individual in order to respect their religious freedom, including a (minimal) legal framework within which the latter can act, would be a disproportionate burden to impose on states given the existing—and rising—diversity. From the other end, to impede people from acting as their beliefs require would breach their human right to religious freedom. Whichever the model of interaction with religion, diversity becomes an issue for state authorities to manage, especially through the law as the latter is meant to be set and not change in order for its subjects to abide by.

From these considerations, a certain tension seems to appear. While the aim of the regime regulating religious diversity and pluralism is to be set and settled, the social shapes of religious diversity seem to be constantly evolving, and following their own rationale. While the framework regulating religion in society needs, by essence, to be set in the stone of the law, the concrete practice of religious freedom is constantly moving and evolving. In other words, when the legal framework of religious freedom is a costume tailored at a given time for the future ones; the social shapes of the latter are in constant variation. Following, pluralism seems to command a balance in between the two; that is, a situation where individuals can enjoy their right to freedom of religion and belief without imposing on states a duty that they are most likely unable to fulfill. For religious diversity to be suitably regulated, it seems that the law setting the framework of religious freedom ought to be flexible enough so as to accompany religious freedom's social evolutions.

[755] *See*, Part II—Chapter 2.

Part III: Religious Pluralism and International Human Rights Law —From the Texts to the Field and Back and Forth.

Managing diversity can prove to be a difficult task for states and public authorities, even when carried through soft means and measures as those of public policy. Policy, indeed, can adapt, be amended and continuously adjusted to the issues faced in the field, especially those which fail to be anticipated or cannot be settled *ex ante*. But in spite of this flexibility, it still finds difficulties to suitably address diversity as it materializes in society. Consequently, to regulate diversity by such a rigid tool as law can prove to be even more difficult. For their obedience to essential fundaments such as legal certainty and non-retroactivity, legal norms need to be fixed and set before their entry into force. Unlike policies, laws and legal requirements are set at a given time for the times to come. That is, they are not as open to change and amendments as policies can be. When a specific issue is regulated into a bill, the latter becomes the reference for all the interactions that take place around the said issue. When a specific legal principle is enacted by judges through case-law, the said principle becomes—by way of Precedent—a legal requirement for subjects of law to abide by, and the reference principle for judges to apply in posterior cases.

As Part I *supra* intended to show, the regulation of religious pluralism, in international human rights law, has been set and designed by three different international organs. Furthermore, the said regulations are quite different: they proceed from different principles and premises, they follow different rationales, and yield in different regulations as such. In fact, they materialize three distinct approaches to diversity and pluralism, each of which posing a greater focus on specific elements to the detriment of others (Chapter 1). This selectivity, in turn, tends to grasp the existing diversity only partially, hence putting limits to the guarantees endowed by the right to religious freedom itself. Therefore, the religious diversity seems to claim for a distinct methodology regulation; it seems to call for an adjustment of the legal hermeneutics

at play in the application of the right to religious freedom. Given diversity is an evolving and constantly moving reality of a social nature, managing diversity and pluralism—on the religious dimension and beyond—seems to call for a methodology which is able to fulfill two essential functions. First, to grasp the social reality as it is, or appears to be, in the considered moment. Second, to be in-keeping with the human rights system as a whole—its objectives and basic principles (Chapter 2). Such a methodology would ground the application of religious freedom in the reality in which it takes place, hence allowing the law to constantly adapt to the latter at the same time as ensuring the highest degree of religious freedom to individuals. The tenets and dynamics of such a methodology allow for a suitable application of the right to religious freedom in various circumstances (Chapter 3).

Chapter 1. Between Society and Individuality: the Pendulum of Pluralism and the Diversity Clock.

As Part I *supra* has tended to show, among the international bodies in charge of supervising the application of human rights by states, three have developed a specific approach to the right for freedom of religion and belief. As explained at length in the same Part I, each one of these approaches stems from the specific stance that the concerned organ adopts in its application of rights. In other words, the regulation of religious freedom at the international level tends to follow three models. Each model is developed by one specific organ—the ECtHR, the IACHR or the HRC—, and according to the specific rationale that the latter deploys when interpreting the right. Consequently, the differences in terms of rationale deployed, in terms of basic principles endorsed and contextual constraints surrounding each organ seem to be the causes the differences of regulation observable in case-law (I).

In parallel, as it has been shown in Part II, diversity has its own mode of evolution. In other words, it obeys to its own dynamics; its evolution follows logics that are distinct from those of the law that regulates it. Indeed, diversity evolves regardless of the human endeavors that intend to control or orient it; it is not the fruit of the human will as law is. Henceforth, the law that regulates it tends to face various limitations when addressing it (II).

I. Religion and the Right to Religious Freedom.

In their effort to interpret the right to freedom of religion and belief, the organs in charge of controlling the application of this right by states tend to resort to various principles. These principles prove to stem from various constraints, including their context of action. For example, the juridic-institutional context that surrounds their activity, or the nature of the applications they receive, can have a direct impact on the way that the right's guarantees can be deployed. These various constraints, along with the heuristics that each organ seems to endorse, yield in the distinctions observed in case-law. Even more so, the observed differences in the benchmarks of interpretation seem to lead, in turn, to differences in the content of the right to religious freedom, to the scope and nature of the guarantees that it enshrines.

From the specific angle of society, diversity and the sociological dynamics of religious freedom, the different regulations tend to emanate from one core distinction. In other words, the international regulation of religious freedom, as exposed in Part I, tends to follow two distinct rationales. On the one hand, indeed, despite their differences, the European Court of Human Rights and the Human Rights Committee of the United Nations tend to conceive of the right to freedom of religion and belief as a set of abstract principles to apply in distinct cases. That is, their basic consideration about society seems to be that the latter is an abstract entity to structure by abstract principles, applied from the top level—that of ideas and principles—to the ground level—that of society. By contrast, the Inter-American Court of Human Rights seems to consider the right to freedom of religion and belief as an umbrella protecting whichever idea that an individual embraces. That is, it seems to consider the right to freedom of religion and belief as a purely individual legal guarantee. In more concise words, when the former organs tend to deploy a top-down approach when interpreting the right, the latter Court seems to proceed through a bottom-up approach that parts from observable individual realities and consecrates them into the law (1). Consequently, neither mode of interpretation seems to take a full account of the global context in which the right ought to be applied, that where the right holders act, evolve and develop (2). In fact, these modes of interpretation seem to be the expression of W. James' partition between rationalists and empiricists. As the latter quotes: "in philosophy we have a very similar contrast expressed in the pair of terms 'rationalist' and 'empiricist', 'empiricist' meaning your lover of facts in all their crude variety, 'rationalist' meaning your devotee to abstract and eternal principles"[756].

1. Three models and two Approaches.

When applying a legal principle in a particular case, the bodies in charge of the operation first proceed with interpreting the latter in light of the facts at hand. Different facts and circumstances, different constraints and contexts bring to light different aspects that a right can have. They can even change, in some way, the initial content of the latter. Likewise, depending on the heuristics embraced by the applying body, the interpretative process may yield in a different content for a given right, and even different guarantees.

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[756] JAMES (W.), *Pragmatism. A new name for some old ways of thinking*, New York [etc.], Longmans, Green, and co., 1907, p. 9.

The modes of reasoning analyzed in Part I, and the heuristics proper to each organ examined, revealed structural differences in the content given to the right to freedom of religion and belief—despite the fact that its provision is almost identical in all the treaties which embody it. In other words, despite the fact that the provision is almost identical to the three treaties considered—namely the ECHR, the ACHR and the ICCPR—, the difference in the heuristics embraced by the three organs tend to result in difference of regulation as examined in Part I.

For example, following its values approach, the European Court of Human Rights seems to subject the application of the right to specific social values. In cases of state and Church relationships, it systematically emphasizes that the proceeding governing the latter ought to be 'objective', 'pluralistic' and conducted in a 'neutral' way.

In *Ancient Baltic Religious Association Romuva v. Lithuania*, the ECtHR was assessing a refusal registration opposed to a Lithuanian community of pagan religions. In its judgment, the Court found that the recognition procedure lacked objective criteria[757], and was, furthermore, conducted by the Lithuanian Parliament. Being conducted by a political body, the procedure bore the risk of politicization, thus breaching the principle of neutrality by which states have to abide when interacting with religions and religious communities[758]. In addition to these elements, granting the recognition required the express authorization of Catholic Church[759]. As a result, the ECtHR found the existing procedure to lack objectivity, and aim at questioning the 'religious nature' of the association[760]. The Lithuanian authorities were thus in breach of their 'duty of neutrality and impartiality'[761] in religious matters[762].

Similarly, in *Metodiev v. Bulgaria*, the Bulgarian state authorities had refused to register a newly constituted religious association, for the registration "would lead them to enter into a

[757] *Ancient Baltic Religious Association Romuva v. Lithuania*, para. 133.

[758] *Ibid.*, para. 134.

[759] *Ibid.*, para. 144.

[760] *Ibid.*, para. 134.

[761] *Ibid.*, para. 144.

[762] *Ibid.*, para. 149.

theological debate on the issue of whether the Ahmadis [community] formed indeed part of Islam or not"[763] [unofficial translation]. They further stressed that the said registration "would create a schism within Muslim community and spread a form of Islam that was not in the tradition of Bulgaria"[764] [unofficial translation]. In other words, in order to avoid addressing a theological issue, to prevent a non-traditional form of Bulgarian religiosity from spreading into the country, to avoid causing a schism within an already existing religious community, domestic authorities refused the association's application for registration. For the domestic authorities, the refusal aimed at safeguarding public order and the rights and freedoms of others as guaranteed in the second paragraph of article 9 of the European Convention on Human Rights.

When addressing the case, the ECtHR started recalling that the autonomy of religious communities and associations was indispensable for religious pluralism in a democratic society[765]. The absence of registration, in the Bulgarian context, amounts directly to preventing a religious community from fulfilling its *raison d'être* with relation to its members. Without it, a community is unable to have a legal personality, to possess goods and places of worship, bank accounts[766]… Therefore, the Court continues, if the aims pursued by the registration procedure could be found legitimate, to applying the procedure in such a strict way would amount to imposing one single recognized association per religion and lead domestic courts to assess themselves the—theological—differences between the religious communities[767]. Such a situation breaches state obligations, particularly their duty to 'remain neutral and impartial'[768] [unofficial translation]. The Court recalls, as in almost every judgment, that the Convention requires states to ensure tolerance between competing groups

[763] *Metodiev and others v. Bulgaria*, para. 8.

[764] The original wording of these two quotations, drafted in French language, reads as follows: "si l'enregistrement sous le nom de 'Communauté musulmane Ahmadiyya' devait être accepté par les juridictions, cela entraînerait celles-ci dans un débat théologique sur la question de savoir si les ahmadis relevaient ou non de la religion musulmane. Elle considérait par ailleurs que l'enregistrement aurait pour conséquence de créer un schisme au sein de la communauté musulmane et de diffuser un islam non traditionnel pour la Bulgarie". *See*, *ibid*., para. 8.

[765] *Ibid.*, para. 33.

[766] *Ibid.*, para. 36.

[767] The Bulgarian system does not provide for any other procedure allowing religious communities to pursue and enjoy legal personality. *See*, *ibid.*, paras. 45-46.

[768] *Ibid.*, para. 46.

rather than to neutralize their opposition by eliminating pluralism[769]. That is, states must respect the religious diversity and ensure a pluralistic management of the latter.

As these cases reveal, the ECtHR tends to reason through specific abstract principles when it assesses the cases submitted to it. In matters of state and Church relationships, it tends to focus on whether state authorities remain objective and neutral when interacting with religious communities. It focuses on whether state authorities, through law and policy, seek to foster religious pluralism in society. Likewise, in other matters involving individual behavior in society, the ECtHR proceeds the same way and reasons through such abstract principles as pluralism, tolerance, gender equality, social integration, etc.[770] . These abstract principles represent the social values that the Court seeks to foster within Europe as a society[771]. For they represent "the ideals and values of a democratic society"[772], as the Court states, the European Convention of Human Rights is "designed to maintain and promote"[773] them.

When presented with the same kind of claims, the HRC tends to adopt a distinct *modus operandi*. Similarly to the ECtHR and its *S.A.S v. France* case, the Committee also faced cases of prohibition measures enacted against religious attires[774]. In *Sonia Yaker v. France*, for example, the author, which was wearing a niqab, was stopped for a security check, then prosecuted and convicted by the courts for wearing a dress that concealed her face in the

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[769] *Ibid*.

[770] Refer to Part I and, *inter alia*, ECtHR, Second Section, Decision, 15/02/2001, *Dahlab v. Switzerland*, Application n° 42393/98; ECtHR, Grand Chamber, Judgment, 13/02/2003, *Refah Partisi (Welfare Party) v. Turkey*, Application n°41340/98, 41342/98, 41343/98 and 41344/98; ECtHR, Grand Chamber, Judgment, 10/11/2005, *Leyla Şahin v. Turkey*, Application n° 44774/98; ECtHR, Second Section, Decision, 24/01/2006, *Şefika Köse and 93 Others v. Turkey*, Application n° 26625/02; ECtHR, Fifth Section, Judgment, 04/12/2008, *Dogru v. France*, Application n° 27058/05; ECtHR, Third Section, Decision, 06/05/2014, *Alida Maria Fränklin-Beentjes and Ceflu-Luz Da Floresta v. the Netherlands*, Application n° 28167/07; ECtHR, Fifth Section, Judgment, 26/11/2015, *Ebrahimian v. France*, Application n° 64846/11; ECtHR, Third Section, 10/01/2017, *Osmanoğlu et Kocabaş v. Switzerland*, application n° 29086/12; ECtHR, Grand Chamber, Judgment, 19/12/2018, *Molla Sali v. Greece*, Application n° 20452/14.

[771] *See supra*, Part I—Book I—Chapter 1—III-IV.

[772] *Soering v. The United Kingdom*, para. 87.

[773] *Ibid.*

[774] *See*, *inter alia*, HRC, Views, 17/07/2018, *Sonia Yaker v. France*, communication n° 2747/2016; HRC, Views, 17/07/2018, *Seyma Türkan v. Turkey*, communication n° 2274/2013; HRC, Views, 17/07/2018, *Miriana Hebbadj v. France*, communication n° 2807/2016; HRC, Views, 01/11/2012, *Singh v. France*, communication n° 1852/2008; HRC, Views, 22/07/2011, *Singh v. France*, communication n° 1876/2009.

public square[775]. Therefore, the case put forward the same issues as the ones presented to the ECtHR in *S.A.S. v. France*[776]. The claimant was arguing a breach of her religious freedom—as protected by article 18 ICCPR. And the defending state was arguing that the measures applied to the author was meant to safeguard the aim of "living together"[777]—just as before the ECtHR. The issues for the Committee to face, examine and elaborate upon, were thus posed in identical terms as before the ECtHR.

Yet, when assessing the case, the HRC abided by a distinct reasoning. Its *modus operandi* consisted first in contextualizing the claim[778]. Then, when dwelling the claims and arguments of the parties, it did not examine them *stricto sensu*; it only controlled their substantiation by the parties. In other words, after recalling the legal principles applicable to the case, the Committee examined whether the elaborations of the parties—especially the defending state—correspond to the legal regime set. In doing so, it kept an analytical distance from the concrete issues at the heart of the litigation, and their potential social implications. After narrowing the case to its concrete features, after contextualizing and individualizing the claims[779], the Committee seems to proceed to a double assessment. First, it determines whether the author's claim has been substantiated enough so as to be admissible and qualify as a potential violation. Then, it determined whether the justifications brought forth by the defending state showed that the latter adequately applied the legal regime to the specific case at hand and its context.

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[775] HRC, *Sonia Yaker v. France*, paras. 2.1.-2.2. The conviction was based on a law, adopted the 11 of October 2010 by the French Parliament following a "broad democratic debate (…) bringing together elected representatives from across the political spectrum, and (…) many persons within civil society, including Muslims and non-Muslims". *See*, *ibid*., para. 7. From the elaborations of the defending state in the case, the issue was revolving around the debate of the time over French values and identity. Hence it was, at the time, of a social importance within the French context.

[776] *See*, *supra*, ECtHR, Grand Chamber, Judgment, 01/07/2014, *S.A.S. v. France*, Application n° 43835/11.

[777] HRC, *Sonia Yaker v. France*, paras. 7.7., 8.9.-8.11.

[778] As argues *supra* in Part I—Chapter 3, contextualizing is the first step of the Committee's *modus operandi*. *See*, Views, 22/07/2011, *Singh v. France*, communication n° 1876/2009; HRC, Views, 01/11/2012, *Singh v. France*, communication n° 1852/2008; and HRC, Views, 05/11/2004, *Hudoyberganova v. Uzbekistan*, communication n° 931/2000 where the lack of contextual elaborations from the parties, especially the state, lead the Committee to conclude for a breach of the author's rights.

[779] Remarkably nuanced, the Committee's Views and elaborations in *Sonia Yaker v. France* go as far as sorting the real implications of the general ban, and reveal a sort of 'hidden agenda' pursued by the law: "the State party [has not] provided any public safety justification or explanation for why covering the face for certain religious purposes — i.e., the niqab — is prohibited, while covering the face for numerous other purposes, including sporting, artistic, and other traditional and religious purposes, is allowed". *See*, *ibid.*, para. 8.7.

Likewise, in *Prince v. South Africa*, the applicant was arguing a breach of his right to freedom of religion and belief due to a set of measures impeding him from consuming cannabis consistently with his Rastafarian beliefs. Said consumption was, indeed, prohibited by law[780], and was considered a 'deviant' practice by the South African authorities. Therefore, the Committee had to rule over a claim bringing forth an individual right on the one hand, and specific dynamics of a society on the other hand. But instead of considering the issue from this angle, the HRC merely accepted the arguments of the defending state without properly dwelling on them, discussing them, or analyzing the issue by itself. To describe this process in other terms, the Committee had to arbitrate in between a recognized religious practice—consistent with article 18 ICCPR—and the established social order of a society. The author's claim, indeed, was shaking the established social order regarding drugs and prohibited substances, as it existed within South Africa as a society. Be it religious, the practice which consists of consuming such substances as cannabis clashed with the premises of the society in which it was taking place—namely, South Africa. However, when dwelling on the issue, the Committee adopted the state's views on the matter and accepted its arguments without questioning them. It conserved its usual distance with the facts and issues of the cases and concluded in favor of the defending state.

Likewise, in *V. D. A. v. Argentina*[781], the Committee was facing a case of abortion in relation with freedom of thought of religion, which at the time, was an issue of social relevance in

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[780] Consumption and use of cannabis, within the South African context, fell under the Drugs and Drugs Trafficking Act and the Medicines and Related Substances Control Act. That being said, these laws enact also exemptions for possession and consumption of such substances as cannabis: under specified conditions, it is granted to patients, medical practitioners, dentists, pharmacists, other professionals or anyone who acquired them in a lawful manner. *See*, *ibid*., para. 2.3. Use for religious purposes does not fall under the exemptions.

[781] HRC, Views, 29/03/2011, *V. D. A. v. Argentina*, communication n° 1608/2007. In this case, the author's daughter became pregnant after being raped. She was seeking for the latter to terminate the pregnancy, but despite Argentinian law allowing for abortions to be performed in cases such as the author's daughter, the Argentinian courts refused to allow the abortion. It was only granted once the author appealed to the Supreme Court, almost a month and half after it was initially requested. By then, all medical centers addressed by the author refused to perform the termination procedure due to the the progress of the pregnancy, which went beyond the 20th week. As a consequence, the author opted for an illegal termination of the pregnancy, and addressed a communication to the Committee alleging the a of various rights, among which the right to freedom of religion and belief. On article 18, the author was arguing that the state, represented by its medical institutions in this case, had failed to respect the right to freedom of religion and belief" as it wielded to the pressures and threats it had received from various parts. More precisely, the author stated that violation of article 18 resulted from the "State['s] inaction in the face of pressure and threats from Catholic groups and the hospital doctors' [resort to] conscientious objection" in order not to complete the procedure.

Argentina and various parts of the world. The HRC was facing a case through which it could settle the links in between abortion and international human rights law in general, especially in light of the right to freedom of thought and religion as guaranteed by article 18 ICCPR. However, instead of making any elaboration on the matter, the Committee declared that the author did not substantiate its claim enough regarding article 18 ICCPR, thus accepting the state's argument "that the activities of specific groups [that is, the organizations and institutions at the origin of the pressures] are unconnected to the actions of its officials [—that is, the medical staff—], and that the hospital's refusal to perform the procedure was guided by medical considerations"[782]. In addition, even when assessing the case through article 2, 3, 7, and 17 of the Covenant, the Committee's assessment remained quite superficial, only limited to the 'contingent' facts of the case, instead of considering the core issues of rights it raised[783].

As it appears from these examples, the Committee seems to show distance with the facts and issues of a case when the latter puts into light issues of social importance. The Committee's treatment of *Prince v. South Africa*[784] and *V. D. A. v. Argentina*[785] seems even to suggest a lesser standard in the control of the substantiation of the claims. That is, they seem to indicate that the Committee's standard of control over the arguments presented by the parties is minor in cases involving issues of a social nature. A control which tends to benefit the defending states—provided that the issue has not been already established in the law, just as in the cases

[782] *Ibid*.

[783] *Ibid*., paras. 9.2.-9.4.

[784] *See*, especially, *Prince v. South Africa*, para. 7.3.

[785] *See*, especially, *V. D. A. v. Argentina*, paras. 8.7., 9.2.-9.3.

involving religious dressing[786]. This analytical distance taken with issues of a social importance seems to be the translation, to case assessment, of the core principle of international law: state sovereignty. Just as the ECtHR, the HRC also seems to part from basic principles in order to delve into a case. The nuance that distinguishes its approach from that of the ECtHR, however, lies in the principles from which the two types of analyzes start. In the case of the ECtHR, the points of departure are multiple—they are the ideals and values of the European Convention of Human Rights. In the case of the HRC, it is rather state sovereignty[787]. Excepting this nuance, both organs share a same approach when considering the parties' claims, arguments, and interpreting the right to freedom of religion and belief. They proceed from the principles, that they apply to the field reality. Their reasoning follows a top-down movement.

Contrasting with this approach, the IACHR tends rather to part from the individual applicants. As demonstrated in Advisory Opinion on *Gender identity, and equality and non-discrimination with regard to same-sex couples* or the other mentioned Case of Atala Riffo and daughters v. Chile, for example, the IACHR, when applying the American Convention, tends to delve into the proper characteristics of the alleged victims and examine the case accordingly. That is, it conducts a multidimensional sociological assessment of the victim's

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[786] The issue was indeed clearly settled in the law since HRC, General Comment n° 22. *See*, also, HRC, *Sonia Yaker v. France*; HRC, *Seyma Türkan v. Turkey*; HRC, *Miriana Hebbadj v. France*; HRC, Views, 19/07/2013, *Mann Singh v. France*, communication n° 1928/2010; HRC, Views, 22/07/2011, *Singh v. France*, communication n° 1876/2009; HRC, Views, 01/11/2012, *Singh v. France*, communication n° 1852/2008. When reading the Views relating to cases of religious dressing, a difference of treatment sparks the eye. When cases of religious attire also raise issues of social relevance, as HRC, *Sonia Yaker v. France* and HRC, *Seyma Türkan v. Turkey*, they do not often receive the same outcome. The discussed cases HRC, *Prince v. South Africa* and HRC, *V. D. A. v. Argentina* yielded in an absence of violation; whereas in HRC, *Sonia Yaker v. France* and HRC, *Seyma Türkan v. Turkey*, the Committee found the states had breached the authors' rights. This difference of outcome may be explained by the fact that the guarantee to wear religious dress is already well established in the Committee's jurisprudence, in both its Views and General Comment n° 22. That is, the assessment of all these cases still follows the Committee's classic *modus operandi* in the matter—individualization, contextualization, distanciation. The cases receive different conclusions based on whether there be any precedent regulating their core issues or not. The Committee tends to accept the state's arguments without further analysis when the issues do not appear to have been subject to prior Views or General Comment—that is, when they lack a precedent. When they do have a precedent, however, the Committee tends to conclude for breaches of the author's right, finding the state's argumentation insufficient.

[787] This stance seems to remain that of the majority, as some of the Committee members tend to make statements encouraging it to engage with social issues, to further develop and elaborate on the rights at stake—especially in the context of the litigation—and settle a position of its own in this type of matters. *See*, *inter alia*, Individual opinion of Committee member José Manuel Santos Pais (dissenting) *in* HRC, *Miriana Hebbadj v. France*; Individual opinion of Committee member José Manuel Santos Pais (dissenting) *in* HRC, *Sonia Yaker v. France*; Individual opinion of Committee member Yadh Ben Achour (dissenting) *in* HRC, *Miriana Hebbadj v. France*; Individual opinion of Committee member Yadh Ben Achour (dissenting) *in* HRC, *Sonia Yaker v. France*; Individual opinion of Committee member Olivier de Frouville (concurring) *in* HRC, *Seyma Türkan v. Turkey*.

condition. Then, adopting the latter as heuristics, it gives its final findings. Such a deep and multidimensional assessment of the victim's condition comprises various elements, including those which are internal to the victims: socio-economic background, beliefs their convictions, and even the psychological aftereffects of the violations[788]. It comprises elements which are proper to the *forum internum* of each person. In doing so, the Inter-American Court considers the cases in their multidimensionality, taking into account various facts and realities related to the sociological condition of the alleged victims[789]. Being that so, the Court parts from the individuals and consecrates their claims into the law, without the mediation of abstract higher principles as the ECtHR's. Its approach, thus, follows a reverse movement to the one followed by the ECtHR—it goes from the bottom to the top, from the field reality to the principles making the right to freedom of religion and belief. Unlike the ECtHR, the IACHR ends-up consecrating into the law what happens to exist in society[790].

In fact, the ECtHR and the HRC seem to put the emphasis on the higher principles presiding over their interpretation of the right to freedom of religion and belief. This emphasis tends to erase individuals behind the said principles, ideas and social values. In doing so, they tend to favor society[791] over the individual, even if the latter is the bearer of the right to freedom of

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[788] *See*, for the previously discussed *Moiwana Community v. Surinam*, HENNEBEL (L.), « La protection de 'l'intégrité spirituelle' des indigènes », p. 274.

[789] *See* also, IACHR. Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua. Merits, Reparations and Costs. Judgment of August 31, 2001. Series C No. 79; IACHR. Case of the Moiwana Community v. Suriname; IACHR. Case of the Yakye Axa Indigenous Community v. Paraguay. Merits, Reparations and Costs. Judgment of June 17, 2005. Series C No. 125; IACHR, Case of the Saramaka People v. Suriname. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 28, 2007 Series C No. 172; IACHR, Case of the Xákmok Kásek Indigenous Community. v. Paraguay. Merits, Reparations and Costs. Judgment of August 24, 2010. Series C No. 214; IACHR, Case of the Community Garifuna Triunfo de la Cruz and its members v. Honduras. Merits, Reparations and Costs. Judgment of October 8, 2015. Series C No. 305; IACHR, Case of the Kaliña and Lokono Peoples v. Suriname. Merits, Reparations and Costs. Judgment of November 25, 2015. Series C No. 309; IACHR. Case of the Sawhoyamaxa Indigenous Community v. Paraguay. Merits, Reparations and Costs. Judgment of March 29, 2006. Series C No. 146; IACHR, Case of Kichwa Indigenous People of Sarayaku v. Ecuador. Merits and Reparations. Judgment of June 27, 2012. Series C No. 245; IACHR, Case of Salvador Chiriboga v. Ecuador. Preliminary Objections and Merits. Judgment of May 6, 2008 Series C No. 179; IACHR, Case of the Indigenous Communities of the Lhaka Honhat Association (Our Land) v. Argentina. Merits, Reparations and Costs. Judgment of February 6, 2020. Series C No. 400.

[790] That is how the Court comes to emphasize the personal autonomy of the individual and the full development of personality as in Gender identity, and equality and non-discrimination with regard to same-sex couples, paras. 87, 88, 226, and the progressive interpretation of the American Convention making state's imperative to accompany and favor the advance of society as exposed in Case of Atala Riffo and daughters v. Chile. Merits, Reparations and Costs, para. 120.

[791] In the framework of the ECtHR, the society is the global society formed by the state-parties to the Council of Europe. The HRC, on the other hand, tends to favor national societies, due to its emphasis on state sovereignty.

religion and belief. The IACHR, by contrast, tends to favor the individual—the alleged victim of the case. It tends to do so even to the detriment of the social dynamics in force within society, of the established social order on which the latter rests, or the political project intended by the domestic authorities[792]. Two different approaches, two different rationales which correspond to two distinct modes of reasoning. Two postures causing pluralism to continuously oscillate between two extreme ends.

2. The Pendulum of Pluralism in Perpetual Oscillation.

As exposed in the previous section, the modes of reasoning embraced by the human rights protection bodies which have tackled religious freedom and issues of religious diversity appear to point in two distinct directions. One approach focuses on higher principles and social values; the other focuses on individuals and their observable sociological constituents.

In other words, the first mode of reasoning "starts from wholes and universals, and makes much of the unity of things"[793]. The ECtHR, when assessing a case, proceeds from higher principles such as European social values and applies them to the case at hand, thus focussing on the unity of the European society as a whole. By contrast, the second mode of reasoning "starts from the parts, and makes of the whole a collection"[794]. Following this rationale, the IACHR tends to part from the individual sociological features of the alleged victims of the case, and makes of their sociological condition a category to protect by law. Two types of reasoning; two ways of relating to diversity and social reality.

Consequently, the emphasis, in these two modes of reasoning, lies either on the empirical data collected from the field or on the principles that ought to structure a system of behavior. It lies either on the individuals as they exist, or on the type of society sought. The global social

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[792] *See*, Advisory Opinion on Gender identity, and equality and non-discrimination with regard to same-sex couples, paras. 87, 88, 226; Case of Atala Riffo and daughters v. Chile. Merits, Reparations and Costs, para. 120.

[793] JAMES (W.), *Pragmatism. A new name for some old ways of thinking*, New York [etc.], Longmans, Green, and co., 1907, p. 11.

[794] *Ibid*. Following this statement, W. James lays additional characteristics of these two intellectual stances. He describes Rationalists, for example, as being intellectualistic, idealistic, religious, monistic and dogmatic. By contrast, Empiricists tend, in his view, to be more materialistic, irreligious, pluralistic and skeptical. *See*, *ibid.*, p. 12.

context in which the individuals evolve, and the cases take place, appear to be quite irrelevant in these two types of reasoning. As regulated in international human rights law, religious pluralism seems thus to spin around the individuals as they exist at the field level, or around abstract principles enforced from above. Society, in itself, with its dynamics, appears not to have any impact on the assessment of cases. It seems not to integrate the hermeneutics of case examination. Pluralism, in this perspective, keeps located on the two extremes of a pendulum stretching from abstract principles on one side and individual behavior on the other. Its position, on one side or the other, depends on the elements serving as references for the reasoning that puts it forth.

The social dynamics that animate society, at the time when the facts of the cases take place, appear to be irrelevant for the organs explored. Yet, as seen in Part II *supra*, these dynamics are paramount for religious freedom to enjoy its fullest extent. The social context is the place where individuals evolve, where they adopt their religious behavior and exert their religious freedom. More precisely, the social context represents, *in fine*, the settings upon which religious freedom takes place. It constitutes the premises of the expression of the right to freedom of religion and belief.

Pluralism is a normative system, applied with the aim of including into society some constituents that are not traditionally associated with it[795]. In that sense, it can include distinct religions, practices, cultures, languages… However, the extent to which a society includes these constituents may vary, especially with relation to the established social order upon which its dynamics take place.

[795] GIORDAN (G.), *ed.*, PACE (E.), *ed.*, *Religious Pluralism*, p. 2. As such, it may exist on tree distinct levels. The first is psychological, and refers to the personal attitude adopted at the individual level. The second can be termed ‘social’ in that it refers to the attitude that society tends to take regarding diversity. Eventually, the third dimension refers to the state, its authorities and services, and the attitude that they manifest through policy and law.

Social order, expressed in the form of laws and regulations and principles of a formal or informal nature, appears to be essential for a society to exist[796]. Indeed, such an order is the basis upon which a society forms. It is the matrix that animates society's dynamics. For a society to exist, there has to be a social order in force. Without such order, there appears to not be any society; in that situation, indeed, what seems to be is an aggregate of independent individuals without interaction. That is, without established rules, of a legal nature or any other, predetermining—or regulating—the minimal social interactions that take place between individuals, there is no interaction between individuals. Neither is there any collective formed by individuals. Thus, there is no society in a proper sense[797]. That being said, the fact that there be an established social order implicates that any behavior which comes to contradict it, or does not fit into it, eventually comes into question, either in terms of social acceptance or legal treatment[798]. In other words, societies exist on an established social order, conceived as a system of formal or informal rules to follow for everyone. This system of rules orders the interactions taking place into society, orders the functioning of its services and everyday dynamics—from institutional action to commerce and other usual interactions between individuals. In this vein, the capacity of a society to include diversity has a limited scope. Depending on the—formal or tacit—rules that make its social order, a society would be able to include practices and behaviors which are not traditionally associated with it, and, at the same time, finds difficulties to include others which question its social order to a high extent. Example: the consumption of prohibited substances can be a mundane and mandatory religious practice in some American societies, and, at the same time, pose extreme difficulties

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[796] F. Tönnies explains that a 'society' is an aggregate of independent individuals juxtaposed to one another, whose rules are expressly stated in the form laws and regulations of a formal or informal nature—that is, they are expressed in the form of a 'social contract' in the meaning of J. J. Rousseau. In addition, F. Tönnies argues that the progressive individualization of the human existence, due to socio-economic conditions of living, turned that association into something more of a 'Society'. *See*, DURKHEIM (E.), « Communauté et société selon Tönnies », *Sociologie*, n°2, vol. 4, 2013 [Online], paras. 3, 13.

[797] *Ibid*.

[798] *See* the dialectics of 'centre' and 'periphery' as described by P. Wittberg in BECKFORD (J. A.), *ed.*, DEMERATH III (N. J.), *ed.*, *The SAGE Handbook of the Sociology of Religion*, London, SAGE Publications, 2007, pp. 323-344.

in European societies. The previously mentioned cases of Peyote[799], the consumption of Ayahuasca[800] and Rastafarianism[801] abundantly exemplify these tendencies[802].

Following, being the normative system meant at including the existing diversity, pluralism seems to constantly oscillate, just as pendulum, between two ends without ever reaching them. On the one end is the social order, that is, the factor of integration of society with all its constituents. On the other end is the individual liberty to proceed to any practice any individual sees fit. To place the pendulum on the first end would highly restrict individual liberty. To place it on the latter undermines the premises upon which society exists—hence society *per se*.

The exercise of individual rights and freedoms takes place within a given society. A society emerges out of the interactions of different individuals. In other words, for human rights and freedoms to be exercised, there needs to be a society facing which they come to be exercised. Human rights and freedoms are tools by which individuals manifest their individual liberty, their free will and their life plan. Their *raison d'être*, as rights and freedoms enshrined into the law, is to allow individuals to be free from the coercion of the state and the society. Consequently, society is also the only place where they can be exercised. It is the only place where they can, by definition, exist. Therefore, pluralism, as the normative system meant at including diversity, seems to be located in the continuum that these two ends—individual liberty and social order—materialize. In other words, pluralism seems to lie between social order and individual liberty, on the religious dimension of society as much as on any other.

For this reason, the deregulated market of religious freedom, as postulated by the Market-Economy model[803], seems to be hardly implementable in practice. It seems to be hardly

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[799] RICHARDSON (J. T.), *ed.*, *Regulating Religion. Case Studies From Around the Globe*, pp. 535-551.

[800] ECtHR, Third Section, Decision, 06/05/2014, *Alida Maria Fränklin-Beentjes and Ceflu-Luz Da Floresta v. the Netherlands*, Application n° 28167/07.

[801] HRC, Views, 31/10/2007, *Prince v. South Africa*, communication n° 1474/2006.

[802] Refer to Part I for a discussion of these cases.

[803] FINKE (R.), « Presidential address: Origins and Consequences of Religious Freedom: A Global Overview », *Sociology of Religion*, Volume 74 (N° 3) — Autumn 2013, pp. 297-313.

translatable into an institutional system. The deregulated market is a situation where every religious behavior that exists is granted the possibility to be adopted by individuals, and its adepts granted the possibility to exercise it. It is a social configuration created by low standards of regulation, where individual religious freedom receives its highest expression. Given the growing religious diversity of domestic societies, any deregulated form of religious market may have three issues to face. First, the capacity of public services to include every religious claim[804]. Then, the potential contradictions with the social order upon which society rests, and thus—eventually—the latter's larger acceptance[805]. As discussed in Part II *supra*, these three aspects can prove, *in fine*, to have detrimental effects on religious freedom when the premises upon which they rest clash with a given religious practice. It is for this reason that the right to manifest one's religion and belief is subject to limits. All human rights treaties which state and guarantee the right to freedom of religion and belief accompany this provision with grounds on which it can be lawfully restricted[806]. Public order, health, security, public morals and the rights and freedoms of others are all parameters for social order. To guarantee them is to protect the social premises for individual liberty and human rights to be exercised. Hence to guarantee them is to protect the social premises in which religious practices can take place.

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[804] In ECtHR, Second Section, Judgment, 03/04/2012, *Francesco Sessa v. Italy*, Application n° 28790/08, the European Court of Human Rights examined the case of an Italian barrister who could not attend a trial hearing, scheduled on a Saturday, for religious duties. The applicant argued that, due to his jewish faith, he had to observe Sabbath on that day. When assessing the case, the ECtHR found that "even supposing that there was interference with the applicant's rights under Article 9 § 1, the Court considers that it was prescribed by law, was justified on grounds of the protection of the rights and freedoms of others — and in particular the public's right to the proper administration of justice and the principle that cases be heard within a reasonable time (…) — and that it observed a reasonable relationship of proportionality between the means employed and the aim sought to be achieved". *See*, *ibid.*, para. 38. Likewise, in Commission, Decision on the admissibility, 03/12/1996, *Tuomo Konttinen v. Finland*, Application n° 24949/94, the sitting judges were confronted with the dismissal of a public servant who failed to adhere to his working hours on the grounds that his belonging to the Seventh-day Adventist Church prevented him from working after sunset on Fridays. The judges then found that his "refusal, even if motivated by his religious convictions, cannot as such be considered protected by Article 9 para. 1". *See*, *Konttinen v. Finland*, p. 7. In other words, the organization of public services—in these cases the judiciary and the State Railways—justified the measures of which the applicants complained as a breaches of article 9.

[805] *See*, Part II.

[806] Article 9(2) of the ECHR states that "[f]reedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others"; article 18(3) of the ICCPR states that "[f]reedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others"; and article 12(3) of the ACHR states that "Freedom to manifest one's religion and beliefs may be subject only to the limitations prescribed by law that are necessary to protect public safety, order, health, or morals, or the rights or freedoms of others".

Thus, pluralism seems to necessarily be an intermediate situation between individual liberty and social order. In the religious economy framework, religious pluralism seems to be the intermediate situation between the deregulated market of religious freedom and the monopoly situation where one religion is authorized and all the others prohibited or constrained. That is, within the religious economy framework, religious pluralism emerges as a form of oligopoly[807]: a system which includes a wide diversity of religious behaviors but nevertheless poses limits—those of a 'social order' nature; These limits, by way of consequence, allow for a variety of religious practices to take place while placing limits on a variety of others. In such a system, the degree of inclusion will depend on the criteria which, emerging from the social order in force within a given society, lie at the heart of the Pluralistic system sought. In other words, the degree of inclusion will depend on the criteria of inclusion set within the pluralistic system involved. According to these criteria of selection, the degree of inclusion will vary.

Religious diversity within domestic societies is constantly growing, and consequently incessantly mutating. Due to this augmentation, as Part II *supra* has concluded, specific religious behaviors and practices come, with the passing of time, to integrate societies where they were unknown or very little known. Societies, therefore, can show limits in their capacity to integrate all the religious practices at stake. Therefore, the inclusion of diversity claims for a balance between the social order that can structure a society and the individual claims for religious freedom. Furthermore, the constant evolution and dynamism of the said diversity claims for this balance to be struck constantly. Diversity is a dynamic concept, the reality that it enshrines proves to be constantly moving.

II. Pluralism and Diversity: Law and Sociology.

From a sociological observational standpoint, religious diversity appears to be a dynamic concept. It is in constant movement and constant change. It is so, as argued in Part II *supra*, for the patterns that modern and postmodern religiosity tends to follow—spirituality, individuality, diversity. In modern and postmodern social settings, religiosity starts at the level

[807] The difference between the deregulated market and the oligopoly is, in fact, a difference of degrees. The oligopoly still allows a variety of diversity in the exercise individual religious freedom, but to a lesser extent than the deregulated market. The oligopoly is most open when the constraints that it imposes stem from the capacity of society to include the diversity. In this situation, pluralism reaches its highest extent.

of the individual and then projects into society, thus augmenting the diversity that comes with globalization.

To grasp this religious diversity by the individual right to freedom of religion and belief tends to yield in the three models of interpretation described in Part I. The human right to freedom of religion and belief is an individual right. When applying its guarantees to specific cases, the human rights Committee and the regional Courts examined tend to develop specific legal hermeneutics, whose tenets are specific to each organ. Hence, projected onto society, the said hermeneutics tend to materialize a specific model of management of religious diversity. One model of focuses on principles and social values. The other tends to focus exclusively on individuals and their individual development. In the former, principles enjoy a primacy that makes the individual's condition irrelevant. In the latter, the focus on individuals and their conditions of living deprives any principle or social value from any importance. In one model, only principles exist; in the other, only individuals exist.

But besides these tendencies, the application of religious freedom, in both models of regulation, remains in constant dialectics with the sociological elements of the cases. In other words, despite the focus adopted in the application of the right, its interpretation, and in some instances even the elaboration of the guarantees it enshrines, it remains that assessing a case is confronting a specific factual situation. That is, in their examination, human rights protection bodies have to assess the situation of an individual who claims to have suffered specific treatments in a specific context. Consequently, in order to treat the case, the three protection bodies take into account some elements of a sociological[808] nature. These elements, revolving around the context of the case, the proper situation that gave way to the litigation, etc., are necessary for the said organs to tackle the applications they receive. For example, in *Mann Singh v. France*, the HRC had to determine the nature of Mr Singh's turban in order to state any finding in his case[809]. It had to determine for which reasons the applicant insisted on

[808] In this perspective, the word 'sociological' refers to the three elements: the facts at stake, their normative evaluation by agents concerned (for example the authorities confronted to them, the assessing organs…), and their construction by the plaintiff in a socio-constructivist approach.

[809] HRC, Views, 19/07/2013, *Mann Singh v. France*, communication n° 1928/2010.

keeping the turban in any circumstance, even on the pictures of his driving license[810]. In the case of *Prince v. South Africa*, the HRC examined whether the applicant was consuming the prohibited substance at stake for religious reasons[811]. Likewise, in *Leyla Sahin v. Turkey*, the ECtHR took into account the apparent political meaning of the applicant's headscarf in order to give its final findings[812]. The IACHR, for its part, has taken these aspects into account in several of its judgements, as explained *supra*.

In other words, case assessment, especially in matters of religious freedom, seems to always involve a sociological analysis of specific elements of the cases. In fact, it even involves a socio-constructivist analysis thereof. Even when the methodologies of assessment seem to revolve around abstract principles exclusively, the global hermeneutics followed still appear to integrate elements and nuances of a sociological nature. For example, the situation of the applicant when undergoing the treatments complained of; the stance adopted by the authorities facing the said applicant; the meaning both subjects give to their acts… What tends to vary is the extent to which they are taken into account: what place they have in the hermeneutics followed when adjudicating.

As a consequence, given its aim of organizing diversity with an inclusive intent, pluralism can be defined as the normative system which is applied by regulatory agents—courts or state authorities—to sociological diversity, with an inclusive intent. That is, a system which consists in a normative treatment of the observable sociological realities. It is, thus, a system which aims at including and integrating into society, through law or policy, the observable sociological realities present therein. It is the confrontation of the law—or policy—to observable sociological realities, with an inclusive intent. Being so, pluralism calls for the integration of sociological findings, as produced by sociological methodologies of investigation[813], in its constitutive hermeneutics.

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[810] Thus dwelling on the 'construction' of the act by the applicant, in a socio-constructivist approach.

[811] HRC, Views, 31/10/2007, *Prince v. South Africa*, communication n° 1474/2006, para. 7.4.

[812] ECtHR, Grand Chamber, Judgment, 10/11/2005, *Leyla Şahin v. Turkey*, Application n° 44774/98, paras. 111-114.

[813] Especially socio-constructivist methodologies, as the latter part from how the realities observed are framed by individuals.

In order to include diversity into society, conceived as a whole, there is a balance to strike between the order upon which society is erected and the individual freedom to act as one sees fit. It is even the more so as the individual tendencies resulting from the exercise of individual liberty is the factor that makes society evolve, adapt to new social settings and tendencies, and eventually mutate with the passing of time. For pluralism only takes place within a given society, with the aim of integrating the latter's constituents, it seems to call for a specific configuration which allows individuals to develop their own individuality without causing prejudice to the founding premises of society. That is, pluralism seems to be a system which includes diversity within the boundaries of the social order in force, at a given time, within society. A system which allows for society to evolve, and which accompanies its mutations.

In other words, pluralism seems to be a system which puts religious freedom and society, law and sociology, in constant dialectics. Indeed, society maintains close and continuous relationships with the laws chosen to order it. And the constant dialectics which take place between law and society seem be a core characteristic of pluralism, given its objective of managing social diversity. Therefore, pluralism calls for sociological findings to be integrated to the hermeneutics at work in its construction—whether through law or policy. It is these elements which seem to be lacking in the models of regulation exposed in Part I above.

Chapter 2. Religious Freedom in a Globalized World: Approach, Regulation and Interpretation.

Pluralism, as a system of management for social diversity, is deeply connected to society, its characteristics, and the dynamics shaping it at a given time. Its enforcement, consequently, requires a prior assessment of the said dynamics. In order for any reality to be regulated, its nature, from a sociological perspective, requires to be settled first. In addition, in the area of religious freedom, the fact that pluralism needs sociological elements in order to be developed is a direct consequence of its deployment through law. In other words, the nature of law, as a construct, requires the integration of sociological findings in order for pluralism to be developed. Being an instrument of social regulation, law always confronts sociological data, in the form of acts and facts, during its elaboration and its application stages.

Law exists in order to confront specific facts and practices. It emerges out of a need to regulate specific issues taking place within society. And it is, after entry into force, applied to specific facts, issues and social realities. In other words, law is an instrument of social regulation (I). For this reason, it is in constant dialectics with the social dynamics, from its elaboration to its application. Therefore, integrating sociology to the legal hermeneutics at play in the elaboration, interpretation and application of the individual right to religious freedom would enrich the latter with a 'reality' dimension that increases the level of protection for individual members of society (II).

I. Pluralism and Religious Diversity—Religious Freedom and Sociology.

At the origins, the legal norm emerges out of the need to regulate problematic aspects. It is, indeed, generally considered that law surges out of a necessity to install order and security, in society in general or a in a specific part thereof, essentially with the aim of limiting arbitrariness and preventing the rule of the most powerful over the powerless (1). This connection with society requires the law to tackle social realities in a precise form. It requires specific methodologies which address the social dynamics taking place, and allow, at the same time, the law to fulfill its set objectives. In other words, this intrinsic connection between law

and society seems to call for an integration of sociology, as a discipline, into the legal hermeneutics at play in the elaboration and interpretation of law (2).

1. Law as instrument of social regulation.

According to the standard definition, laws, norms and legal regulations are sets of commandments. That is, indications to follow, either in the form of actions to perform (obligations) or others to avoid (prohibitions). Being so, they often find to put limits to individual freedom, and to one's will to adopt any behavior one sees fit. General in their scope and application, laws, norms and legal regulations apply to all their subjects indistinctly. Therefore, they tend to orient individual behavior, individual freedom, towards specific modes of behaving and interacting. They tend to crystallize a type of behavior for their subjects to adopt, either in specific instances or in the larger social life. In other words, law regulates societies and human behavior by orienting the latter towards specific aims, conceived as the ideal behaviors to adopt. Hence it tends—*in fine*—to materialize a global order, which limits individual freedom on the margins in order for every member of society to actually benefit from individual freedom in general terms. To term it concisely: law is an instrument of social regulation.

Law's *raison d'être* is to apply to a specific society[814] and install a specific order therein. The latter order may be made of specific principles, it may be oriented towards specific ideals, or arise from specific conceptions. The laws, norms and legal regulations in force within society aim at realizing it. As F. Gény explains, the "[l]aw, intended as a technique, seems to represent the handmade dimension of the legal edifice, *i.e.* that which is properly *constructed*, by opposition to what is *given*. There lies something specific to it (…), which is the fact that constructing the law must be oriented towards a specific end, to maintain order within societies"[815] [unofficial translation].

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[814] In both meanings of the term. First, in the larger meaning which equates society with nation-state. And, second, in the narrower meaning which designates specific groupings of people, such as associations and corporations; groups which abide by specific sets of laws regulating their activity.

[815] The original wording, in French language, reads as follows: le "La technique juridique me paraît représenter le côté artificiel de l'édifice du droit, ce qui en est proprement construit, par opposition à ce qui en est donné. Il y a bien là quelque chose de spécifique au droit (…) en ce que la construction juridique doit être dirigée en vue d'un but propre, le maintien de l'order dans les sociétés". *See*, GENY (F.), *Science et Technique en Droit Privé Positif*, Paris, Sirey, 4 vol., 1913, Tome 3, pp. 18-19.

In the various conceptual experiences revolving around the state of nature, the philosophical thought yielded to the conclusion that societies can only exist when individuals living together abandon some of their freedoms for the greater good of all others[816]. Regardless of the supposed original and primary nature of the human being, whether essentially hostile as postulated by T. Hobbes, or intrinsically good and compassionate as formulated by J. J. Rousseau[817], the philosophers of the state of nature yielded to the conclusion that, when interacting with each other, human beings eventually enter into conflict. Within each human being, there is a basic desire to follow one's own choices and pursue objectives individually set. That is, a basic drive towards determining on one's own the meaning and direction of one's existence. Thus, they seek to fulfill their individual needs and desires, sometimes at the expense of each other[818]. Consequently, it is in order to prevent conflict, limit power struggles, and eliminate the arbitrary cycle of domination and spoliation resulting from anarchy that law enters into force. Under the supervision of a super-entity that lies above everyone, laws are enacted for everyone to follow and abide by[819]. In this vein, all individuals suffer a loss of freedom, with the corollary gain that everyone enjoys freedom. In other words, in this conceptual experience, the law addresses a specific state of society—the state of nature—characterized by force and anarchy, and intends to drive it towards another state made of order and freedom for all individuals evolving therein.

Likewise, the advent of human rights, as a corpus of individual rights endowed with legal force, also abides by the same type of dynamics. In fact, they stem from the specific aim to endow individuals with the most essential guarantees commanded by their human nature, especially when facing the state and its authorities. Indeed, state authorities are the guarantors

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816 For instance, DURKHEIM (E.), « 'Le Contrat Social de Rousseau' Histoire du Livre », *Revue de Métaphysique et de Morale*, T. 25, No. 1, 1918, pp. 1-23; RIEU (A.-M.), « La nature de Jean-Jacques Rousseau », *Revue de Métaphysique et de Morale*, 85e Année, No. 4, 1980, pp. 438-451; GOLDSCHMIDT (V.), « État de nature et pacte de soumission chez Hegel », *Revue Philosophique de la France et de l'Étranger*, T. 154, 1964, pp. 45-65; SPITZ (J.-F.), « Le Concept d'état de Nature chez Locke et chez Pufendorf: Remarques sur le rapport entre épistémologie et philosophie morale au XVIIe siècle », *Archives de Philosophie*, Vol. 49, No. 3, 1986, pp. 437-452.

817 *Ibid*.

818 DARWALL (S.), « The Sociable and the Unsociable ».

819 These laws and regulations made amount to what J. J. Rousseau called the 'Social Contract'—the clauses of the contract to respect when entering a society.

of the social contract putting an end to the state of nature, which they guarantee by the rules and regulations that they enact. Sole bearers of the legitimate use of power and coercion, following M. Weber's idea, states guarantee the application of the law and the protection of the individuals living within their jurisdiction. Through public services and institutions, states are the unique bearers of the power to protect individuals from each other. Consequently, on states depends the application of the social contract, and the transition from the state of nature to the state of society. *A contrario*, given they are the sole bearers of the power to coerce; because of the fact that public services and institutions are the ramifications of the state, no other institution is likely to protect individuals from the abuses committed by the state itself. Also, for states are the unique guarantors—and, before 1984 UDHR, the unique creators[820]—of the rights and laws in force within their jurisdiction, individuals could suffer lawful spoliations and deprivations of liberty, for example when states refused to grant them the suitable rights. Authoritarian states, past and present, offer eloquent examples of this tendency. And international human rights offer a limit thereto.

Indeed, before the advent of human rights as legal obligations for states to abide by, individuals were exposed to abuses coming from state authorities themselves. Hence, with the integration of human rights into positive international law, specific guarantees were enacted for individuals in order to face sate abuses specifically. Long discussed and debated across history, human rights have been eventually integrated into positive international law as a reaction to the violations committed during and before the second World War. The specific aim for which they have been integrated to positive international law was this need to protect individuals from state abuses. The right to freedom of thought and religion proceeds from the same intent—it is aimed at protecting individuals from any state treatment that could cause them prejudice on the religious dimension. It is designed to protect them from any violation inflicted to them because of their religious affiliation, practice or beliefs. And thus protecting individuals from state abuses, mistreatments or violations, human rights seek to manifest a global order within society, where individuals fully enjoy their 'human' dimension.

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[820] Regarding basic human rights, there were a few Bills enacting human rights guarantees before the Universal Declaration. Among these were the French declaration of Human and Citizen's rights of 1789, the Magna Carta of 1215, and the United States Bill of Rights of 1791. However, these Bills of rights were enacted domestically, promulgated by state authorities, and their enforcement depended uniquely on the latter.

Eventually, laws adopted at the domestic level also arise from a necessity to regulate specific aspects of society. Whether relevant for society at large or circumscribed to a particular sector within the latter, such as fiscal and investment laws for example, laws and regulations seem to always aim at installing public order, public safety, and well-being in society[821]. So is the case, for example, of the laws granting and regulating abortion that have been adopted in the latter half of the XXth century. The increasing number of non-legal abortions and the socio-cultural changes that followed 1968 called for the said laws to be adopted[822].

Therefore, from its roots, law appears to be an instrument by which the ruling elites of a society seek to install a specific order or foster specific dynamics for that end. Law can seek the concretization of justice, preserving human dignity, protecting individual rights and individual freedoms as in modern democratic states. It can seek the consolidation of power and the stranglehold of specific elites on state institutions, or even nepotism as was the case of the past Kingdoms and Empires—and modern authoritarian states and dictatorships. Through all these contexts, the constant appears to be the fact that law faces the settings of society as

[821] The actual content of the laws may vary, according to the processes followed in their production by law makers, the stakeholder involved in their crafting, and their later interpretation by judges along the cases. That is, since they are elaborations of the ruling elites of a time, producing and interpreting law may endow them with a distinct content following the context of their application. Time and culture play an important role in determining the content of laws. However, public order, safety and the well being of society seem to be constants in the lawmaking processes, in that they seem to guide the latter as ultimate objectives to reach.

[822] For further elaborations on the French context, *see*, for example, MATHIEU (M.), « L'avortement en France : du droit formel aux limites concrètes à l'autonomie des femmes », *Droit et société*, 2022/2, N° 111, pp. 335-355; OLIER (L.), « Présentation du dossier. La prise en charge de l'IVG en France : évolution du droit et réalités d'aujourd'hui », *Revue française des affaires sociales*, 2011/1, pp. 5-15; DIVAY (S.), « L'ivg : un droit concédé encore à conquérir », *Travail, genre et sociétés*, 2003/1, N° 9, pp. 197-222; THALMANN (R.), DHOQUOIS (R.), « La lutte pour le droit à l'IVG », *Les cahiers du CEDREF*, 4-5, 1995, pp. 97-102.

they exist at a given time[823]. Law is in constant interaction with society. It is in constant dialectics with the dynamics of society and its evolution. For this reason, sociology appears to be an essential—yet quite ignored—component of legal hermeneutics. Sociology seems to accompany and merge with the law at all stages—that is, from its conception phases to its interpretation and application in specific case litigations. Furthermore, this connection between sociology and law appears to be the transposition, to the legal hermeneutics, of the key statement made by the IACHR in the Case of Atala Riffo and daughters v. Chile. In that case, indeed, the Court stated that states are under the imperative to accompany and favor the advance of society through a progressive interpretation of the American Convention[824]. In other words, states must take into account the tendencies shaping their respective societies when enacting laws and regulating social issues. From the perspective of legal hermeneutics, this obligation calls for the integration of sociology to the set of disciplines which compose lawmaking, legal interpretation and the application of law by judges to specific cases.

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[823] In legal philosophy, some schools of thought have argued that social dynamics are not relevant for lawmaking, and hence for legal hermeneutics. The most prominent of these schools of thought appear to be *jus positivism*—especially its normativist branch—and *jus naturalism*. According to *jus positivism* legal norms are the product of the previous ones, which already within the legal order. Therefore, the *raison d'être* of any legal norm is a previous legal norm from which it stems, a norm that it seeks to precise, develop, amend or abrogate. Society, in this perspective, does not have any impact on the legal norm: law in this perspective, obeys legal mechanics which are determined by previously enacted norms. The legal hermeneutics, for *jus positivists*, are the mechanics that animate the life of legal norms. *See*, GIRARD (C.), *Des droits fondamentaux au fondement du droit: Réflexions sur les discours théoriques relatifs au fondement du droit*, Paris, Éditions de la Sorbonne, 2010, pp. 53-129, 174-175. According to *jus naturalism*, on the other hand, the origin of the legal norm is human reason: once devoid of socio-cultural considerations, the legal rationality at work will tend to yield naturally to the suitable legal norm. *See*, TRINDADE (A. A. C.), *International Law for Humankind*, Leiden, Martinus Nijhoff Publishers, Vol. 317, 2006, pp. 272-273 where the author argues that "basic considerations of humanity have an important role to play" in the development of law—the new *jus gentium*, as he names it. More precisely, the author states that "[g]eneral principles of law are inextricably linked to the very foundations of Law (…). There are general principles of law (such as that of the dignity of the human person) which are truly fundamental, identified with the very foundations of the legal system, and conforming the *substratum* of this latter. They have always been present in the quest for justice. They have been repeatedly restated, and retain their full validity in our days. Legal positivist thinking has always tried, in vain, to minimize the role played by those principles, but the truth remains that, without them, there is no legal system at all, national or international. They give expression to the idea of an objective justice, expressing the universal juridical conscience, and paving the way to a universal International Law, the new *jus gentium*, the International Law for humankind". In other words, the author explains that law—national and international—is the emanation of the dignity of the human person through human rationality, that he calls 'conscience'. As their doctrines postulate, both schools of thought relinquish to see in social dynamics a basis upon which laws and legal norms are produced. They may even amount to denying that society constitutes one of the elements taken into consideration by lawyers, lawmakers and governing authorities when producing laws and regulations, or endowing them with further interpretation. As exposed in Part I, the activity of international human rights Courts and protection bodies tends to contradict these assumptions—considerations relating to society are key in their adjudicating processes.

[824] Corte IDH. Caso Atala Riffo y Niñas Vs. Chile. Fondo, Reparaciones y Costas. Sentencia de 24 de febrero de 2012. Serie C No. 239, para. 120.

Furthermore, integrating sociology to the legal hermeneutics will foster a continuous adaptation of the law to the observable social realities, hence resulting in a better fulfillment of the objectives of regulation. In other words, including sociology in the legal hermeneutics, especially at the three stages mentioned, would lead law to be flexible enough and better address the issues it is meant to address. In F. Gény's words, the traditional legal "technique (…) hardens and clots the law, which, in order to better address its ultimate objective, should remain mobile and espouse the contours of facts and circumstances"[825] [unofficial translation].

The judgements and Views analyzed in Part I suggest that the three organs explored do include elements of a sociological nature in their adjudication process. Cases such as Atala Riffo and daughters v. Chile[826], Osmanoğlu et Kocabaş v. Switzerland[827], and V. D. A. v. Argentina[828] reveal that the adjudicating organs tend to be aware of the sociological underpinnings of the cases they examine. In the first case, the IACHR had to rule on the concept of 'family' as such. In the second case, the ECtHR took into account the domestic values of Switzerland in order to give its final conclusions. In the latter case, the Committee was seemingly aware of the fact that abortion was a controversial issue in Argentina and many other societies composing its jurisdiction, hence its reluctance to elaborate on it. Therefore, it appears that some elements of a sociological nature still penetrate the adjudication processes and the way that courts and treaty bodies relate to the cases. However, the final impact of these elements remains superficial, especially with regard to diversity and social dynamics as the latter are incessantly evolving.

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[825] GENY (F.), *Science et Technique en Droit Privé Positif*, Paris, Sirey, 4 vol., 1913. Tome 3, p. 41. The original French wording of the statement reads as follows: "Ainsi, la technique (…) durcit et fige le droit, qui, pour répondre à son but ultime, devrait rester mobile et épouser les contours es faits et circonstances. C'est ce qu'on observe déjà, the author adds, quand on oppose la rigidité de la loi écrite (…) à la mollesse des situations juridiques, si variées, que nous offre la vie sociale. Et le même défaut se manifeste, à chaque instant, dans les constructions artificielles, qui prétendent suppléer à l'imprécision des préceptes de justice".

[826] Corte IDH. Caso Atala Riffo y Niñas Vs. Chile. Fondo, Reparaciones y Costas. Sentencia de 24 de febrero de 2012. Serie C No. 239.

[827] ECtHR, Third Section, Judgment, 10/01/2017, *Osmanoğlu et Kocabaş v. Switzerland*, Application n° 29086/12.

[828] HRC, Views, 29/03/2011, *V. D. A. v. Argentina*, communication n° 1608/2009.

Eventually, integrating sociology to the application of the right to freedom of religion and belief, and to the hermeneutics presiding over its interpretation at the international level, would also be in keeping with some tendencies observed at the domestic level. In the national realm, the judiciary tends to be one of the main fora where religious freedom is discussed and determined; one of the main fora where the latter's contours are discussed and settled. And, in their effort to do so, judges tend to resort to sociological aspects in such a way that endows religious freedom with a touch of social construction.

2. The right to Freedom of Religion and Belief and the Judicialization of Religious Freedom.

Originally, 'judicialization' refers to a process by which an object comes gradually to integrate the domain of the judiciary. Whether belonging, originally, to a specific power or a specific authority of the state, an object undergoes a 'judicialization' when it gradually enters, whether partially or exclusively, the domain of the judiciary. In other words, the 'judicialization' is a gradual shift from one power or authority of the state to the judiciary. Seen from another perspective, judicialization also encompasses "the expansion of the province of the courts or the judges *at the expense of the politicians and/or the administrators*, that is, the transfer of decision-making rights from the legislature, the cabinet, or the civil service to the courts"[829]. The transfer can be partial or total; the legislature can still, for example, exercise its drafting mandate, adding provisions to former statues or amending or abrogating the latter. However, the judicialization endows the judiciary with prerogatives of the same kind. Judges can add content to specific rights, through interpretation in specific cases; they can amend a right formerly set when it proves to contradict other provisions, laws or rights of a fundamental nature. Thus, 'judicialization' refers to a gradual shift in decision-making, from other state authorities to the judiciary.

On an institutional dimension, this shift seems to be taking place at an increasing rate. Scholars of judicialization argue that "courts rather than legislative or executive branches

[829] MAYRL (D.), « The Judicialization of Religious Freedom: An Institutionalist Approach », *Journal for the Scientific Study of Religion*, 57(3), 2018, p. 517.

decide major political issues"[830]. And, more specifically, they appear to be "playing a major role in the management of religion"[831], for religious freedom is, in large part, "socially constructed"[832].

In fact, religious freedom is a legal concept. It is the set of laws and regulations that ensure individuals with the right to 'behave religiously'. That is, religious freedom is the set of laws and regulations which allow individuals to perform any act, carry any practice, or adopt any behavior they consider to be religious. In that, religious freedom is a legal framework which takes the traits of a (legal) container in which individuals can put the acts, practices and behaviors they qualify themselves as religious.

The basic legal framework for religious freedom is enshrined within the international right to freedom of religion and belief[833]. As a consequence, the behaviors and practices that religious freedom encompasses depend on their conformity to this provision. In other words, the individual practices which form part of religious freedom—and hence are protected by the right to freedom of religion and belief—are those which do not clash with the limitation grounds enshrined in the limitation clause contained within the right to freedom of religion and belief. Any act, practice or behavior that falls within the right to freedom of religion and belief is considered to be the exercise of religious freedom. From a legal perspective, religious freedom is a container, which contains practices and behaviors.

On the contrary, from a sociological perspective, religious freedom refers to the acts, practices and behaviors themselves. The sociological perspective contemplates the acts to which individuals proceed in the exercise of their religion. Accordingly, from this perspective,

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830 *Ibid.*, p. 515.

831 *Ibid.*

832 RICHARDSON (J. T.), « Managing Religion and the Judicialization of Religious Freedom », *Journal for the Scientific Study of Religion*, 54(1), 2015, p. 1.

833 National constitutions also enshrine a fundamental right to religious freedom, but the primacy of international law over domestic law leads to the the regulation enshrined in national constitutions to be in the background of the legal framework. International law's primacy over domestic law, including national constitutions, entails that domestic regulations must, first and foremost, be in keeping with international law. This makes of the right to freedom of religion and belief as listed in article 18 ICCPR, article 12 ACHR and article 9 ECHR the basis of religious freedom, including within the domestic realm.

religious acts, practices and behaviors can be widely diverse—they include, in fact, every act considered as religious by the individual who proceeds to it[834]. From a sociological perspective, religious freedom refers to what is comprised within the (legal) container rather than to the law itself.

Therefore, given the Judiciary is the power of the state in charge of controlling the righteousness of the application of the law, the prerogative of the judges is to examine concrete acts and behaviors and compare them to the settings of the law. More precisely, the function of the Judiciary, as it stems from case-law, is to give further meaning to the legal clauses set within the statutes and the treaties to apply. That is, the Judiciary's function is to further the legal content of a provision, such as a guaranteed right, in light of the facts raised by a case. From this perspective, judges appear to be a link between the law and the social reality. The "transfer of decision-making rights from the legislature, the cabinet, or the civil service to the courts"[835] tends, thus, to result in a direct integration of the social realities into the legal hermeneutics—of adjudication in this case. In other words, the judicialization of religious freedom demands that social realities and social dynamics be integrated into the legal hermeneutics. Even more so, it makes this integration unavoidable, for judges face social realities when applying the law. The righteousness of the application of the law tends to depend on it, especially in the context of a litigation.

Also, by the fact that the judicial application of the law takes place *a posteriori*, judges find to deepen the initial configuration of the rights set into the legislation. By confronting these rights to specific facts and circumstances, in fact to the field reality, judges tend to nuance, enrich and adjust the rights initially set. The judicial control adjusts the rights, and their content, to society and its dynamics. And it is all the more so when the litigation dwells on the application of the limitation clause, by the fact that the grounds the latter contains remain quite broad and sometimes blurry.

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[834] As stated and demonstrated in Part II, the contemporary religious experience endows religion with a large part of individual elaboration.

[835] MAYRL (D.), « The Judicialization of Religious Freedom: An Institutionalist Approach », p. 517.

As demonstrated by case-law, the ECtHR tends to endow these grounds with an extensive interpretation[836]. Likewise, the limitation clause contained in article 18 ICCPR is also subject to interpretation for the broadness of its grounds[837]. This broadness of the limitation clause leads to the fact that the actual behaviors and practices contained within religious freedom are those acts which do not contravene the way the limitation clause happens to be understood by those in charge of its enforcement. In other words, the practices and behaviors protected by religious freedom tend to depend on the understanding of its—broad—grounds of limitation. As a legal concept, religious freedom tends to comprise the acts and behaviors which do not clash with the limitation grounds, as the latter happen to be understood. The decision whether or not to protect a given religious practice tends to depend on how public order is conceived, on what public safety is thought to be, on the way public morals are approached, etc.[838]. And the concrete meaning of these grounds depends on how those in charge of applying religious freedom conceive the factual realities that they convey. Indeed, the way public order, morals, safety and security are conceived infuses—through interpretation—their legal content as grounds of limitation for the right to freedom of religion and belief. According to the factual realities to which the limitation grounds refer, religious acts, practices and behaviors will enjoy, or not, the legal protection of religious freedom. That is, depending on what is the

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836 *See* the "rights and freedoms of others" in such cases as ECtHR, Grand Chamber, Judgment, 01/07/2014, *S.A.S. v. France*, Application n° 43835/11; ECtHR, Fourth Section, Judgment, 28/10/2014, *Gough v. The United Kingdom*, Application n° 49327/11; ECtHR, Fourth Section, Judgment, 29/06/2004, *Leyla Şahin v. Turkey*, Application n° 44774/98; ECtHR, Third Section, Judgment, 10/01/2017, *Osmanoğlu et Kocabaş v. Switzerland*, Application n° 29086/12.

837 As an example, public order is discussed *in* GUNATILLEKE (G.), « Criteria and Constraints: the Human Rights Committee's Test on Limiting the Freedom of Religion or Belief », *Religion and Human Rights*, 15, 2020, pp. 20-38.

838 For instance, in *Gough v. The United Kingdom*, the applicant firmly held "belief in the inoffensiveness of the human body". *See*, ECtHR, Fourth Section, Judgment, 28/10/2014, *Gough v. The United Kingdom*, Application n° 49327/11, para. 6. As a consequence of walking bare naked in public, Mr Gough was prosecuted and convicted several times. *Ibid.*, paras. 8-99, 146, 171. When delving into the case, the Court first stated that issues of a moral nature give way to a wide margin of appreciation for states, since there is no consensus on the matter in between its state parties. *Ibid.*, para. 166, 172. Then it added that, still, expressing one's belief "does not go so far as to enable individuals, even those sincerely convinced of the virtue of their own beliefs, to repeatedly impose their antisocial conduct on other, unwilling members of society". *Ibid.*, para. 176. In other words, the applicant's behavior strongly disturbed the established social order; it was executed in a way that clashed frontally with society's premises. It clashed so frontally with what society would have been able to accept that it amounted to an "antisocial conduct". *Ibid.* It was in contradiction with the values at work in the social space, and, consequently, was found to be legitimately forbidden by state authorities. *Ibid*. Incidentally, it is worth noting that prior to its conclusion, the Court made a statement affirming the importance of respect by the State of the views of minorities, which "ensures cohesive and stable pluralism and promotes harmony and tolerance in society". The limit being, it its own words, that such views and consequent conducts ought to not be "*per se* incompatible with the values of a democratic society or wholly outside the norms of conduct of such a society". *See*, *ibid.*, para. 168.

sociological substance of the limitation grounds—the concrete situations that they refer to—, the acts and behaviors and practices adopted in application of religious freedom will, or not, be protected. In the case of congruence, on the sociological dimension, between these limitation grounds and the religious acts examined, the latter would tend to benefit from the protection of religious freedom. On the contrary, whenever the sociological substance of the limitation grounds appears to be incongruent with the religious acts, behaviors and practices examined, the latter would not benefit from religious freedom's protection. They tend, in this case, to clash with the limitation grounds, and hence be restricted by state authorities. Following, for the fact that the limitation grounds convey sociological realities, the behaviors and practices contained within the legal category of 'religious freedom' might change from one jurisdiction to another, from one society to another, or even from one epoch to another. As argued by J. T. Richardson, one of the main fora where these elements are settled tends to be the courts[839]. Based on this fact, the author argues that religious freedom "is a socially constructed and quite contested concept"[840]: its sociological shapes affect the legal framework in which it is enshrined, especially when it is further interpreted, elaborated and enriched through case-law.

Eventually, religious freedom also entails guarantees on the collective level. And these guarantees also bear an institutional aspect, which stems out of various factors. The type of relationships enjoyed by states and religious authorities may yield in specific legal arrangements, in the erection of specific religious institutions, and specific developments of religious freedom on the institutional dimension[841]. The way national institutions and state authorities have been historically dealing with religion tends to result in specific requirements enabling religious groups to benefit from the guarantees entailed by religious freedom. Hence the nuances, from one jurisdiction to another, from one society to another, which differentiate the guarantees that religious freedom conveys regarding groups and communities. Hence the

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[839] RICHARDSON (J. T.), « Managing Religion and the Judicialization of Religious Freedom », pp. 1-4 *in fine*, 14. Also, RICHARDSON (J. T.), LEE (B. M.) « The Role of the Courts in the Construction of Religious Freedom in Central and Eastern Europe », *Review of Central and European Law*, 39(3), 2014, pp. 291-313.

[840] RICHARDSON (J. T.), « Managing Religion and the Judicialization of Religious Freedom », p. 1.

[841] *See*, RICHARDSON (J. T.), LEE (B. M.) « The Role of the Courts in the Construction of Religious Freedom in Central and Eastern Europe ».

differences, in terms of procedures and criteria of recognition, that govern state and Church relationships within the states that recognize religious communities[842].

On both its individual and collective dimensions, the legal regime of religious freedom bears a sociological dimension. Being a legal framework regulating the behavior of groups and individuals on the religious dimension of social life, social realities revolving around religion overflow over the legal characteristics of religious freedom. That is, to a greater or a lesser extent, social dynamics integrate the legal regime set for religious freedom within a given society. As F. Gény subtly explains, social realities tend to become legal rules through the mediation of a specific element of a conceptual nature[843].

However, social realities might not be the only factors influencing the legal framework of religious freedom. Related laws, the type of legal system—adversarial or inquisitorial—, the interpretive rules guiding the adjudication process, and other factors facilitating the access to courts may also have an impact on the legal regime of religious freedom[844].

II. The Dialectics of Law and Sociology: Methodological Tenets.

As it has been discussed in the previous sections, the *raison d'être* of the legal norm is to order society. By prescribing behaviors to adopt and others to avoid, law orients human behavior, and regulates the relationships taking place between individuals, between individuals and the state, or between states themselves. In that, law is deeply rooted in the society it seeks to regulate. Its primary feature is to face individual behavior and the social realities in which they appear to be embedded.

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[842] *Ibid*.

[843] The entirety of his idea is expressed in the following words: "[les] 'réalités sociales', [consistent] en intérêts ou besoins, qui proviennent des émotions, sentiments ou tendances (désirs, inclinations, passions), des croyances ou des volitions, des instincts ou des habitudes, suscités chez les hommes par les faits et circonstances de la vie en société, et qui doivent être combinés ou équilibrés en vue de leur satisfaction adéquate. Ces 'réalités sociales' se transforment en 'réalités juridiques', dès l'instant qu'elles donnent lieu à des règles de conduite extérieure, présentant le caractère de règles de droit. Pareille transformation implique l'intervention d'un élément conceptuel minimum, sans lequel la règle de droit, œuvre de l'esprit et destinée à l'esprit, ne peut être ni créée, ni transmise. Tant que l'idée n'est employée que comme l'intermédiaire indispensable à la traduction du précepte, elle fait partie de la réalité juridique elle-même et il n'est pas à parler de pure construction de l'esprit. Celle-ci n'apparaît que si le concept se dégage du réel, s'il est traité pour lui-même, comme entité logique, décidément isolée de la vie". *See*, GENY (F.), *Science et Technique en Droit Privé Positif*, Paris, Sirey, vol. 3, 1913, p. 195.

[844] MAYRL (D.), « The Judicialization of Religious Freedom: An Institutionalist Approach », pp. 519-520, 522.

Within this general framework, human rights fulfill the specific mandate of protecting individuals from potential state abuses. Their ultimate aim, as rights, is to safeguard a specific space of liberty where individuals can act and behave, even against state measures and policies. Indeed, in this situation, the state is considered to breach the said rights.

However, this classical conception of human rights as rights 'against the state' faces limits when the said rights come to be implemented. Precisely, when implemented, human rights are applied and used for behaving into society. So much so, even if they are meant—primarily—to face the state, they also come to face the behavior adopted by the other individuals living in society. In other words, when applied by the courts, human rights are put in context, and come to face the general behaviors which animate the society. They come to face the social realities and the social dynamics which make the established social order of society[845]. Therefore, once put in their context, human rights appear to face both the state and the social dynamics at the same time. For example, it can be argued that the international human right to freedom of religion and belief could protect practices which consist of consuming specific products, either considered as harmful or simply prohibited in certain societies. When stemming from religious conceptions, these practices are generally recognized as religious practices. And they are acknowledged as such by the individual believers practicing the religions from which they stem. In other words, these practices are generally acknowledged to be religious, and the individual believers who proceed to them do so in furtherance of their religious practice. In *Alida Maria Fränklin-Beentjes and Ceflu-Luz Da Floresta v. the Netherlands* and *Prince v. South Africa*[846], the applicants followed this line of argumentation. Following, their ritual practices could be protected by religious freedom as enshrined in article 9 ECHR and article 18 ICCPR. But the said protection was not granted, for the established social order within the societies in which the litigations took place came at odds with the said practices. On both social and legal-institutional dimensions, the said societies did not allow for these practices to take place.

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845 The 'centre' as exposed in BECKFORD (J. A.), *ed.*, DEMERATH III (N. J.), *ed.*, *The SAGE Handbook of the Sociology of Religion*, pp. 326-329.

846 ECtHR, Third Section, Decision, 06/05/2014, *Alida Maria Fränklin-Beentjes and Ceflu-Luz Da Floresta v. the Netherlands*, Application n° 28167/07; HRC, Views, 31/10/2007, *Prince v. South Africa*, communication n° 1474/2006.

Applying rights, thus, requires taking into account both aspects: it requires to seek to grant the maximal protection for individuals, still taking into account the fundamental dynamics animating society—that is, the social order upon which society, as a whole, rests. Considering religious freedom from both ends would endow the right to freedom of religion and belief with a maximal protection.

To do so requires a specific methodology of contextualizing law and its application. A methodology that goes beyond the rigidity of *jus positivism*—especially in its normativist branch. A methodology that also, and simultaneously, anchors the right in society, unlike the tendencies of *jus naturalism*. Such a methodology, which inclines towards the sociological schools of jurisprudence, has specific theoretical underpinnings (1). Applied to human rights and, more specifically, to the management of religious pluralism through the human right to freedom of religion and belief, it suggests integrating other branches of international law which have a direct impact on the latter (2). The said integration leads, indeed, to an objective framework regulating the dialectics between individual tendency and society, between majority and minority, 'centre' and 'periphery'. In other words, it leads to a proper management of religious diversity, endowing religious freedom with its maximal scope and grounding its guarantees in the social premises of society (3).

1. Theoretical aspects.

Relocating the legal norm into its context of application has been an essential characteristic of the sociological school of jurisprudence. Although it consolidated as a proper school of thought in the turn of the last century, under the auspices of such distinguished jurists as R. Pound, H. L. A. Hart, R. Saleilles and F. Gény[847], the patterns of thought making the sociological school of jurisprudence can be traced back to as early as the XVIIIth century. In *The Spirit of Laws*, for example, Montesquieu stressed the need to consider the laws as part of

[847] In fact, the emergence and upturn of the sociological school of jurisprudence corresponds to the emergence and upturn of sociology as social science. That is, in the beginning of the XXth century. In one of three papers analyzing extensively various schools of jurisprudence existing at the time, published between 1911 and 1912, R. Pound declared: "Sociological Jurisprudence is still formative". *See*, POUND (R.), « The Scope and Purpose of Sociological Jurisprudence. [Concluded.] III. Sociological Jurisprudence », *Harvard Law Review*, Vol. 25, No. 6, 1912, p. 489. That is, as he explains, it had gone through various stages, but it remained, in the beginning of the XXth century, on its way to maturity. *See*, *ibid.*, p. 489-516.

a definite context which gives them birth and commands their application at the same time[848]. That is, the law does not stem out of society directly; it does not necessarily correspond to the principles that human beings adopt spontaneously in their interactions, their daily life and behavior. However, the circumstances in which the law appears, the realities it intends to tackle and the rationale it follows when addressing these realities all stem out of the observable facts taking place within society. According to E. Ehrlich, indeed, Montesquieu's idea is that "in order to discover the social foundation of law we must seek the very form in which it is engendered by society. It is not the (…) law as we find it in the codes, the textbooks, and the law tracts. The (…) law does not proceed directly from society, it is devised by legislators and jurists. Society itself fashions only the legal order of the fundamental social institutions, the order of clan, family, village community, property, contract, inheritance. The ruling of this legal order (…) constitutes the only law which may be found in primitive tribes or lower stages of civilization, and even in our own time a great deal of law still consists only in the legal order of social institutions. From this primary legal order, the rule of law is derived by jurists and legislators by very intricate processes (…). The (…) law cannot be understood sociologically without considering the legal order from which it arises"[849].

This emphasis on social reality for the production and interpretation of the law is the hallmark of the sociological school of jurisprudence (A). Applied to religious diversity and pluralism, it leads to a specific interpretation of the right to religious freedom, which tends to part ways with the existing interpretations exposed in Part I *supra* (B).

A. Rationale: Following this rationale, scholars of the beginning of the XXth century proposed to resort to other disciplines and social sciences in order have a full grasp of the social reality, as it is this full grasp that allows to elaborate and, above all, interpret the law. The focus of these scholars, in dealing with the law, is the scientific description of the social

[848] EHRLICH (E.), « Montesquieu and Sociological Jurisprudence », *Harvard Law Review*, Vol. 29, No. 6, 1916, pp. 582-600.

[849] *Ibid*., p. 584.

reality itself[850]. For R. Pound, for example, law is an intellectual object located in the confluents of two social dynamics: the one it stems from and the one it fosters. Indeed, juridical sciences ought to drive legal principles from the observed social dynamics and determine their effects once they be implemented[851]. Anticipating these effects, and analyzing them *a priori* then allows to "orient their construction [meaning that of the law] in the perspective of meeting and satisfying optimally the needs expressed by society"[852] [unofficial translation].

For H. L. A. Hart, the law tends to be a principle which guides individual behavior and enjoys, at the same time, an official recognition[853]. That is, a principle of behavior adopted by individuals in society and sealed by state authorities. In this perspective, to make a law or determine the content of a law, by interpretation for example, requires to know the social realities from which the said law stems. It requires to know the patterns of behavior followed by individuals in order to confer them the legal seal. In other words, when elaborating or interpreting a law, judges or lawmakers proceed to "recognizing"[854] the laws as they manifest in society.

This 'recognition' plays an important role in F. Gény's thought as well, although with key nuances. Unlike H. L. A. Hart's recognition, F. Gény uses the term "intuition". After stressing the need to resort to sociology in order to determine, with as much precision as possible, the social realities to rule by law[855], he states that "in order to discover […] the behavioral principles to follow, by which the human being abides once put in society, we must mainly

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[850] GIRARD (C.), *Des droits fondamentaux au fondement du droit: Réflexions sur les discours théoriques relatifs au fondement du droit*, Paris, Éditions de la Sorbonne, 2010, paras. 166-175.

[851] *Ibid.*, para. 237. Furthermore, R. Pound distinguishes himself from other tenants of the same school of jurisprudence by the fact that, for him, law is to be discovered from the observation of society. And discovering the law, in his view, is not the specific task of a specific category of jurists—judges for example. On the contrary, it is a diffuse process in which a multiplicity of actors can be involved. *See*, *ibid.*, para. 232.

[852] *Ibid*., para. 237. The original quotation, in French language, reads as follows: "Pound veut pouvoir prévoir ces effets, les analyser et, en définitive, les orienter dans la perspective d'une satisfaction optimale des besoins exprimés par le corps social".

[853] *Ibid*., paras. 200, 213.

[854] *Ibid*., para. 213.

[855] *See*, GENY (F.), *Méthode d'Interprétation et Sources en Droit Privé Positif. Essai Critique*, Seconde Edition Revue et Mise au Courant, Paris, LGDJ, vol. 1, 1996, 446 p.; GENY (F.), *Méthode d'Interprétation et Sources en Droit Privé Positif. Essai Critique*, Seconde Edition Revue et Mise au Courant, Paris, LGDJ, vol. 2, 1996, 422 p.

rely on this sort of intellectual sympathy that we have named intuition, and which, sensing the palpitations of society, will discover in it the rules which would be likely to orient it towards its ends"[856] [unofficial translation]. In other words, for F. Gény, the scientific observation of society tends to materialize the ends towards which society evolves, as if the behavioral patterns followed by individuals in their interactions were pointing to specific ideals. Parting from these behavioral patterns, the observing human intellect projects the ideals towards which society appears to be evolving. The laws and principles guiding the human behavior in society then become those ideals endowed with legal character. In concise words, the laws by which individuals abide when behaving in society are the legal crystallization of the ideals put forth by the evolving dynamics of society. For that reason, sociology, in F. Gény's thought, is the basis of the legal hermeneutics, as it is the discipline which provides the most faithful image of society. Following its description of the social dynamics, it is possible to determine the laws to adopt or the interpretations to endow the latter with[857]. The "intuition", in his thought, then refers to the intellectual activity that jurists deploy in making the law or interpreting it. It, therefore, points to the same reality as H. L. A. Hart's "recognition"—the difference between the two lies in the hermeneutics that both operations suppose.

Thus, the sociological school of jurisprudence sparks with its special focus on society and social reality. That is, its intent to build the most faithful and representative image of social reality. For that end, its tenants advocate for resorting to other disciplines and social sciences in order to have a full grasp of the social reality, given that it is the latter and its dynamics that are the bases of lawmaking and law interpretation. Accordingly, the sociological school of jurisprudence also distinguishes from other schools, such as *jus normativism* and *jus naturalism*, for the pragmatism of its hermeneutics and its inclination towards practice. That is, its consideration of law as an instrument of social regulation—which stresses the importance of lawmaking and interpretation as processes. As R. Pound explains, "[t]he main problem to which sociological jurists are addressing themselves today is to enable and to

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[856] The original French wording of the citation reads as follows: "pour découvrir, dans le donné de la nature et de la vie, les principes de conduite, qui s'imposent à l'homme en société, nous devrons principalement compter sur cette sorte de sympathie intellectuelle, qu'on a appelée l'intuition, et qui, ressentant les palpitations mêmes de l'organisme social, y saura découvrir le secret des règles capables de le diriger vers son but". *See*, GENY (F.), *Science et Technique en Droit Privé Positif*, Paris, Sirey, vol. 2, 1913, pp. 7-8.

[857] *Ibid*., pp. 82-83.

compel interpretation and application of legal rules, to take more account and more intelligent account, of the social facts upon which Law must proceed and to which it is to be applied"[858]. For sociological jurists, indeed, it seems that "law is a product of power forces taking place on the social sphere; and the science that surrounds it seeks to optimize the exercise of the judiciary"[859] [unofficial translation].

B. Sociological interpretation of the right to freedom of religion and belief: At the heart of analyzing the international regulation of religious freedom lies the analysis of the interpretation given, by international human rights protection bodies, to the right to freedom of religion and belief. The provision holding the guarantee is set in international treaties. The latter, indeed, sets a specific regime and a specific framework for religious freedom to be implemented and guaranteed. However, as has been explained along the previous chapters, the said provision still contains clauses and legal categories whose meaning is not clearly settled. Therefore, the application of the provision still calls for further interpretation.

Accordingly, interpreting a right means to give a more precise—or a more specific—meaning to the latter. In other words, it is determining the right's content, whether generally or with relation to a specific area. This feature confers to judges, domestic and international, as well as to the members composing international human rights protection bodies, the primary role in setting the guarantees that religious freedom entails.

The right to religious freedom seeks to endow individuals living in society with the maximal degree of liberty on the religious dimension. It seeks to maximize their degree of liberty on a specific dimension of social life. The right touches directly upon individual behavior in society, and proves, thus, to be deeply connected to the realities and dynamics that structure it. As a consequence, the basis of interpretation of the right to freedom of religion and belief is to be found in society. In fact, applying the international human right to freedom of religion and

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858 POUND (R.), « The Scope and Purpose of Sociological Jurisprudence. [Concluded.] III. Sociological Jurisprudence », *Harvard Law Review*, Vol. 25, No. 6, 1912, pp. 512-513.

859 GIRARD (C.), *Des droits fondamentaux au fondement du droit: Réflexions sur les discours théoriques relatifs au fondement du droit*, para. 229. The original French wording of the quotation reads as follows: "Elle est partagée par les discours à dimension sociologique dans lesquels le droit est un rapport de forces sociales ; et la science qui s'y rapporte, une technique d'optimisation de l'exercice de la profession judiciaire".

belief seems to depend on the interpretation given to the said right, by courts and protection bodies, in light of the social dynamics taking place within society.

From the specific angle of diversity and pluralism, the right to religious freedom seems to put individuals and society into a dialectical process. As explained in Part II *supra*, the contemporary religious experience tends to start from the individual. Religiosity as a lived experience is, indeed, elaborated by individuals using all the intellectual resources at their disposal. Furthermore, the elaboration concerns both the basic beliefs upon which the religious experience rests and the ritual practices that they convey. The individual right to religious freedom would thus suggest that any practice considered as religious by the individuals who proceed to it would legitimately find to benefit from the said right's protection and guarantees. But such an extensive protection would lead to adamant clashes between religious practices and the social order established within society, which, *in fine*, prevents society from functioning and causes further prejudice to religious freedom itself[860]. As a result, interpreting the right to freedom of religion and belief calls for a balance to be operated between the religious practices claiming the legal protection and the essential features of the social order in which they ultimately take place.

By taking "more account and more intelligent account, of the social facts upon which Law must proceed and to which it is to be applied"[861], the sociological school of jurisprudence seems to operate such a balance. For law to regulate social facts, it must be applied to the social facts as they take place—as brought forth objectively by sociology and its empirical methods. In other words, law proceeds through the social facts and social dynamics when it parts from the latter and orients them towards the ends set within the legal frameworks. In this perspective, law serves as a bridge between the social realities taking place in society and the ideals to which the law drives. It parts from the social order established within society and orients the social dynamics taking place within the latter towards a greater respect of individual rights.

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[860] *See supra*, Part II—Chapter 2 and Chapter 3.

[861] POUND (R.), « The Scope and Purpose of Sociological Jurisprudence. [Concluded.] III. Sociological Jurisprudence », *Harvard Law Review*, Vol. 25, No. 6, 1912, pp. 512-513.

In relation to religious diversity and pluralism, the interpretation of the right to freedom of religion and belief would part from the observable social order of society, and orient the latter's dynamics towards a better inclusion of the religious diversity. In other words, applying religious freedom would respect the established social order, and, at the same time, gradually accompany society towards the degree of inclusion sought by religious freedom as an individual right. The right to freedom of religion and belief would serve as a trigger driving society from one state to another: from its current dynamics to the ideal sought by the right to religious freedom itself. That is, gradually evolving from society's present social order to an order that encompasses all the diversity present therein. Or, from the individual's perspective, from a capacity to live religiosity which is limited by the current characteristics of the social context, to a social configuration where religious freedom reaches its maximal extent. In P. Wittberg's words: gradually, from the narrow limits of the centre to including the wider periphery[862].

2. Concretization and development.

At the start of the sociological interpretation of the right to religious religious freedom, there is a diagnosis to be conducted on the religious dynamics of society. Before seeking to include religious diversity, by any system of pluralism, the sociological school of jurisprudence requires to sketch the religious landscape of the considered society. In other words, it calls for determining which practices make the centre of society and which remain on the peripheries (A). This 'mapping' of society, in terms of social dynamics, allows indeed to delimit the scope of the interpretation of the right to religious freedom (B), starting from its context of application. Following, after determining the social dynamics of society, especially those of a religious nature (C), pluralism, as a legal framework, can be deployed (D).

A. Pluralism and inclusion of peripheries: For pluralism is the normative system aimed at including diversity, to analyze any system of pluralism amounts to analyzing the patterns of integration of society. Or, better said, to analyze the tenets by which society integrates. That is, to examine the way in which a given set of elements integrate a bigger set where they

[862] BECKFORD (J. A.), *ed.*, DEMERATH III (N. J.), *ed.*, *The SAGE Handbook of the Sociology of Religion*, London, SAGE Publications, 2007, pp. 323-344.

prove to be, in a way, new. In fact, analyzing pluralism and diversity amounts to analyzing, first and foremost, the dynamics that take place between the majority and the minorities.

Analyzing religious pluralism, specifically, is, therefore, to analyze religious diversity. That is, to analyze the dynamics that take place between the religious majority and the religious minorities within a definite social context. In other words, it is to analyze how and to what extent the religious majority and the religious minorities integrate with each other, or in which way the established social order of a society integrates the novelties propelled by specific groups, practices or social tendencies.

As it has been explained *supra*[863], due to their congruence with the socio-cultural and institutional characteristics of society, religious majorities are often located at the 'centre' of the latter. Consequently, they leave other minorities in the latter's periphery. The alignment with socio-cultural and institutional characteristics of society is a key indicator of the social acceptance that a group of people enjoy. The closer to the centre, the greater the said social acceptance. The further from the centre, the lesser the social acceptance. In fact, the closer a religious group appears to be to the centre, the more common[864] the beliefs and practices of the latter—that is, the more resemblance between the religious group's core beliefs and the ideas and behaviors in force within society. On the contrary, the misalignment of beliefs, practices and general behavior seems to be a root cause for social non-acceptance and state prohibitions. Indeed, the said misalignment seems to be the cause of a drift from the centre—the area of the 'acceptable and accepted'—to the periphery of society, the area of the 'questioned' or simply prohibited practices.

These strict relationships taking place between majority and minorities, however, do not preclude social dynamics. Societies, indeed, change. They evolve and mutate; they are in constant reconstruction, incessantly transitioning from one state to another. This evolution seems, precisely, to be caused by the novelties to which society is subject throughout its

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[863] *See*, *ibid.*, p. 228.

[864] That is, their beliefs and practices share the same—or close—conceptual premises as other beliefs and practices widespread into society. In that sense, despite any differences that may distinguish them from the latter, individual members of society still generally consider them as 'normal'.

existence. Out of need, fashion, or technical progress, the established social order of a society is constantly shaken by new paradigms that structure social life on the intellectual dimension as well as the strictly material dimension. These paradigms can materialize, for example, in the form of political ideologies, in novel beliefs regarding life in general, as much as new products for individual use or new technologies with a more transcendental impact on individual life. As a consequence, the reaction of society to these novelties can often be located on a spectrum going from resistance and rejection to adaptation and adoption. The further a paradigm proves to be from the centre of society, the more resistance it will face. In other words, the less a paradigm rests on familiar beliefs and ways of thinking that animate a given society, the more resistance it would find to face.

Therefore, the fact that societies evolve means that the latter are open to novelties. More precisely, it means that the social order established within a given society also evolves with time, following the dynamics that make the evolution of society. In other words, it is inevitable that society comprehends new beliefs, new practices and modes of living as time goes: the continuous contacts with these novelties, observable on the intellectual and material dimensions of existence, yield in observable mutations of the social order making the bases of society. Gradually, the established social order within a given society evolves, comes to include new bases for social life, and hence paves the way for social evolution. New needs, new trends, new ideologies constantly push societies towards evolution. The latter come to gradually include novel ideas, beliefs, ideologies and technical productions in order to respond to specific social, political, or technical needs that society manifests. In doing so, it also includes the changes which are necessary for these novelties to take place. That is, in accepting these novelties, it paves the way for the corresponding socio-institutional changes to take place, such as, for example, those related to the necessary installations, to the institutional and infrastructural settings, and to the legal frameworks surrounding their use by individuals. In short, the intellectual superstructures of society, as made of the basic beliefs and ideas guiding the latter's existence at a given time, tend to determine the social and institutional infrastructures of the latter, meaning the practices, behaviors, institutional

arrangements and regulations that individuals need when abiding by the basic beliefs and ideas making the superstructures[865].

To formulate this idea in better words, it can be said that societies tend to rest on a specific established social order, made of specific sets of beliefs and ideas which manifest in specific practices and behaviors. However, this established social order is not rigid and impermeable. It is in constant interaction with new social forces that foster its gradual evolution and, consequently, the evolution of the social dynamics that animate society. In this perspective, social evolution seems to be the result of the constant dialectical process that takes place between the social order established at a given time and the new social realities emerging within society[866]. The evolution of society tends to proceed from the dialectics taking place between social order and the exercise of individual freedom. New social trends, paradigms and realities seem to be the factors by which society evolves.

Therefore, as guarantor of rights and duties; in execution of its duty of managing society; as protector of the social order upon which society rests, what is the stance of the state before these novelties? Does the state have to include all novelties that emerge at a given time? In other words, does it have to seek and include every new element adding-up to the diversity composing society at a given time? Does it have to grant to each person an individual right to act as they intend to? In the words of religious freedom: does the state have an obligation to

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[865] The origin of the infra/superstructure of society can be found in the works of K. Marx and L. Althusser. The authors use this metaphor to describe the dynamics taking place on the socio-economic dimension of society. They postulate that the socio-economic infrastructures of society and its ideological superstructures are directly linked to each other. However, which one influences the other and the precise role of each structure, as they describe it, prove to be debatable. The monolithic process that the two philosophers seem to describe, arguing that the influence tends to go from one to the other, finds limits when confronted to the real nature of the dynamics they observe. *See*, WILLAIME (J. P.), « L'opposition des Infrastructures et des Superstructures : one Critique », *Cahiers International de Sociologie*, Vol. 61, 1979, pp. 309-327. It seems, indeed, that the influence is mutual, of a dialectic rather than monolithic nature. *Ibid*., p. 327. Nevertheless, this conceptualization, insofar as it tends to describe specific social dynamics circumscribed to a specific dimension of society, can be transposed to the religious dimension of the latter. In religious matters, ideology, conceived as a belief system regarding external material reality, constitutes a framework of action for state authorities through institutions and public services for example. The latter, in the religious dimension, tend to address religious claims, and thus operate with or for them. Henceforth, the superstructure engendered by the said belief systems tends to manifest into institutional infrastructures—such as public services, specific legal arrangements… Therefore, it can be said that, in religious matters, the ideological superstructures of society tend to determine the legal-institutional infrastructures of the latter.

[866] The same dialectical process exposed *supra* between society and individuals, between centre and periphery: individuals hold ideas which belong either to the centre or to the periphery; these ideas appear to still be engaged in a dialectical process with those ideas composing the social order of society.

guarantee to each person an individual right to embrace any belief and practice, as long as they form part of the said person's religion?

From an international human rights law perspective, the right to freedom of religion and belief does not seem to put such an obligation on the state. More precisely, as Part I *supra* has intended to show, the limitation clause enshrined within the right to religious freedom enables states to limit religious manifestations when they pose a challenge to public order, safety, health or morals, or the rights and freedoms of others. Therefore, states tend to discriminate between religious practices, according to the latter's impact on the elements listed in the limitation clause. State authorities tend to draw a distinction between religious manifestations, according to what is perceived as harmful or as a potential cause of jeopardy for public order, safety, health, morals, and the rights and freedoms of others. When a religious practice is perceived to jeopardize one of these elements, states tend to forbid its manifestation.

B. Religious diversity and the sociological interpretation of the right to religious freedom —scope: As explained *supra*, according to the sociological school of jurisprudence, the basic fundaments of law reside in society. Following, juridical sciences ought to drive legal principles from the observed social dynamics, and determine the effects that their implementation would lead to. Whether a construction meant at "satisfying optimally the needs expressed by society"[867] [unofficial translation], principles which guide individual behavior while enjoying, at the same time, an official recognition[868], or the natural ends that a society manifests through the interactions that take place between its members[869], laws take their source in society and the observable dynamics that take place therein. Hence it is only possible to enact laws—or adopt interpretations thereof—when parting from a faithful description of these social dynamics[870].

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[867] GIRARD (C.), *Des droits fondamentaux au fondement du droit: Réflexions sur les discours théoriques relatifs au fondement du droit*, para. 237.

[868] *Ibid*., paras. 200, 213.

[869] *See*, GENY (F.), *Science et Technique en Droit Privé Positif*, pp. 7-8.

[870] *Ibid*., pp. 82-83.

In application of this framework, the interpretation of the right to freedom of religion and belief, in the specific area of religious pluralism and diversity, would part from the observable social order of society and orient the latter's dynamics towards a better inclusion of the religious diversity present therein. In other words, applying religious freedom would part from the established social order, and, at the same time, gradually accompany society towards the maximal degree of inclusion of the religious diversity. The established social order would be a matrix upon which to build the legal edifice allowing for diversity to be included.

Following, religious freedom would be fully guaranteed to any act, practice or behavior of a religious nature that does not clash with the social order on which society rests. Any religious act that is located at the 'centre' of society would enjoy the full guarantees that religious freedom provides. At the same time, those guarantees would extend to those religious acts, practices and behaviors which may contradict the established social order but do not properly and structurally clash with it. That is, those acts, practices and behaviors located at the immediate 'periphery' of society. Religious freedom, in this perspective, would gradually comprehend the diversity that animates society. And, at the same time, it would not impose on the latter, or the authorities in charge of its management, the heavy burden of including every religious act and practice, even those which prove to be structurally incompatible with the social order on which society is erected.

When practices and social behaviors contradict the social order in force within a given society, they tend to be put at the periphery of the latter. They tend to be considered as

deviances[871]. However, when they constitute a social dynamic of their own, they tend to become a social force, a proper social dynamic, and, *in fine*, part and parcel of the order that is established within society. In other words, when new practices and behaviors reach the level of social dynamic within a given society, they tend to become the forces which make the latter evolve. So much so, even if they are on the peripheries of society, for contradicting basic aspects of the established social order that used to reign therein, they cease to be proper deviances or considered exogenic social novelties. They come to constitute a proper social dynamic which makes the established social order evolve—and hence lead the corresponding society to evolve. Since "*social groups create deviance by making the rules whose infraction constitutes deviance*, and by applying those rules to particular people and labeling them as outsiders"[872] [original emphasis], the acts, practices and behaviors considered as deviances change with the passing of time and the evolution of culture. What is considered a deviance at one given time, within specific socio-cultural settings, can be considered as normal on other times, under other socio-cultural settings.

As an example, homosexuality was long considered a deviance—and even legally prohibited—in various countries and cultures around the world[873]. With the passing of time, the

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[871] BECKER (H. S.), *Outsiders. Studies in the Sociology of Deviance*, New York, The Free Press, 1963, p. 8. The author defines 'deviance' as the infraction to some rule agreed-upon at the social level. "All social groups, he states, make rules and attempt, at some times and under some circumstances, to enforce them. Social rules define situations and the kinds of behavior appropriate to them, specifying some actions as 'right' and others as 'wrong'. When a rule is enforced, the person who is supposed to have broken it may be seen as a special kind of person, one who cannot be trusted to live by the rules agreed on by the group. He is regarded as an *outsider*" [original emphasis]. *See*, *ibid.*, p. 1. In other words, "[b]efore any act can be viewed as deviant, and before any class of people can be labeled and treated as outsider for committing the act, someone must have made the rule which defines the act as deviant". *Ibid*., p. 162. In the author's view, "[t]hose groups whose social position gives them weapons and power are best able to enforce their rules. Distinctions of age, sex, ethnicity, and class are all related to differences in power, which accounts for differences in the degree to which groups so distinguished can make rules for others". *Ibid*., p. 18. Therefore, "deviance it *not* a quality a of the act the person commits, but rather a consequence of the application by others of rules and sanctions to an 'offender'. The deviant is one to whom that label has successfully been applied [by the one(s) who made the infringed rule]; deviant behavior is behavior that people so label" [original emphasis]. *Ibid*., p. 9. The central characteristic of a deviant behavior seems, indeed, to lie in the transgression of the rules in force within society. *See*, MELUCCI (A.), « Société en changement et nouveaux mouvements sociaux », *Sociologie et sociétés*, Volume 10, Number 2, 1978, p. 38.

[872] BECKER (H. S.), *Outsiders. Studies in the Sociology of Deviance*, p. 9.

[873] *See*, MIGNOT (J. F.), « Decriminalizing Homosexuality: A Global Overview Since the 18th Century », *Annales de démographie historique*, 2022/1, n° 143, pp. 115-133. The author explains that "the decriminalization of homosexual acts may be seen as an 'outcome and index of wider social change' (…), an indicator of the liberalization of state action (…) and perhaps also civil society's values, and also an indicator of the degree of freedom people may enjoy". In other words, the decriminalization of homosexuality is, for the author, directly linked to society and its dynamics.

evolution of society and culture, it has gradually been subject to decriminalizing and eventually reached social acceptance[874]. The same pattern can be applied to other social realities such as the legal status of children born outside marriage, abortion, euthanasia in some specific countries, the use of prohibited substances for religious or other reasons… The said practices may still be considered deviances by some individuals, and hence be subject to their contempt. But this qualification and contempt tends to take place at the individual level exclusively, as society—conceived as the aggregate of all individuals—tends to consider these realities as normal social acts. With the passing of time and the evolution of society, the said acts came to integrate the social order of many societies.

Therefore, the social order upon which society rests gradually evolves. It seems to gradually come to include acts and behaviors once portrayed as deviances; and, *a contrario*, it gradually excludes acts and practices once considered normal. This movement seems to be a norm in the evolution of society. Therefore, the mandate of state authorities, as put forth by the sociological school of jurisprudence, is to accompany these evolutions and orient them, by laws and regulations for example. In the area of religious freedom specifically, the sociological school of jurisprudence tends to suggest for states to grant the guarantees the latter enshrines to every act, practice and behavior of a religious nature which has a grip on the evolution society—that is, which have come to constitute a proper social dynamic. In this perspective, religious freedom would accompany society, through state implementation measures, towards the degree of inclusion that the right to freedom of religion and belief aims at. And this inclusion would take place gradually, without clashing with the established social order or calling it into question in such a way that would undermine society's premises, thus causing prejudice to religious freedom as such. For inclusion of diversity takes place on the social, institutional and public-service levels[875], state authorities can prove to be unable to integrate, within society, the individual behaviors that do not align with the established social order. Hence imposing on them an obligation to provide for a system that could guarantee the right to freedom of religion and belief to every act, practice or behavior individually embraced

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[874] Within the French jurisdiction, for example, homosexuality was listed as a criminal offense under article 331 of the French Criminal Code. It was definitely decriminalized by law n° 82-683, dated 4 August 1982. China, for its part "decriminalized homosexual relations in 1912 as part of the abandonment of the Qing Code and a broader modernization of its criminal law". *See*, *ibid.*, pp. 124-126.

[875] *See supra*, Part II—Chapter 3. State and Religious Diversity—in *Praxis*.

would be a heavy burden that can prove to be impossible to fulfill. Conversely, when a specific act, practice or behavior reaches a level of social acceptance and crystallizes around it a multiplicity of individuals, it becomes a social dynamic *per se* that state authorities cannot leave aside or simply forbid. When the said act, practice or behavior is of a religious nature, the right to religious freedom and belief would command state authorities to provide it with the legal guarantees allowing it to be exercised by those who embrace it.

From this sociological perspective, the right to freedom of religion and belief would not impose on states an obligation to guarantee a right for every person to adopt any behavior or practice they see fit. Rather, the state would grant this protection to those religious practices and behaviors which have crystallized in a proper social dynamic. In other words, it would not be the mandate of the state to include any religious practice which appears in the periphery of society, *a fortiori* when it is an isolated practice of one individual or one group of individuals. Rather, the state would provide the guarantees of the individual right to freedom of religion and belief to those religious practices and behaviors which have become proper social tendencies. The key of the process appears, thus, to be the recognition of the social tendency itself. In more precise words, the key seems to be the methodology to employ in order to identify a social tendency.

C. Social dynamics and social tendencies: The ability to recognize a social tendency, or a social dynamic, can prove to be a quite difficult task. From a holistic sociological perspective, a tendency can be defined as the "intensity characterizing the attitude adopted by a group, a permanent attitude [which is] proper to the group and which varies only on the margins"[876] [unofficial translation]. In short, it is the "inclination of a social group"[877] [unofficial translation].

Being so, a social tendency seems to be characterized by a set of acts, practices and behaviors, and a proper mode of thinking from which the said acts, practices and behaviors result. The

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[876] SIRACUSA (J.), « Quelques usages du terme 'tendance' en sociologie », *Revue européenne des sciences sociales*, 55-2, 2017, p. 215. The original French wording of the quotation reads as follows: "une intensité de l'attitude du groupe, attitude permanente, propre au groupe et ne s'actualisant que partiellement".

[877] *Ibid*., p. 214. The original French wording of the quotation reads as follows: "Le penchant d'un groupe social".

intellectual premise of these acts and behaviors can be framed in a political narrative, in which case they tend to become political claims, political issues, and address the political authorities directly. But their structuration in a narrative of a political nature is not systematic, nor a *sine qua none* condition for their existence. Acts and practices may amount to proper social dynamics despite not put to the agenda[878] of the society or that of state authorities.

Therefore, the essential characteristic of a social tendency remains the permanent stance that a social group tends to adopt. That is, the acts and behaviors, as much as the intellectual bases of the latter, that a group of people embraces. In addition, as J. Siracusa explains, these social inclinations have to be consistent enough so as to be permanent, in the meaning of resulting from a deep adherence of the group members. In fact, a social tendency seems to be characterized by three essential features: the adherence of a number of people within a state's population; social characteristics that differ sharply from those of other social groups composing society; and a substantial adherence to these characteristics by the individual members involved. In fact, a social tendency seems to correspond to what the legal terminology designates as a 'minority'.

Indeed, in his special report entitled *Study on the rights of persons belonging to ethnic, religious and linguistic minorities*[879], F. Capotorti concluded that a minority is a "group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members—being nationals of the State—possess ethnic, religious or linguistic characteristics

[878] *See supra*, Part II—Chapter 3—I—1—B.

[879] UNECOSOC, Report, 1979, Study on the rights of persons belonging to ethnic, religious and linguistic minorities, E/CN.4/Sub.2/384/Rev.1.

differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language"[880].

The aim of F. Capotorti's report was to realize "a study of the implementation of the principles set out in article 27 of the International Covenant on Civil and Political Rights with special reference to analysing the concept of minority taking into account the ethnic, religious and linguistic factors and considering the position of ethnic, religious or linguistic groups in multinational societies"[881]. In other words, the study was based on the framework set by article 27 of the ICCPR, which focuses expressly on those minorities of an ethnic, religious, or linguistic nature[882]. However, despite this focus, his definition insisted on the sociological characteristics that make a—religious, ethnic or linguistic—minority. As a result, it gives a sociological account of what constitutes a minority, and can be applied to every group of individuals, even other than an ethnic, religious or linguistic nature *stricto sensu*. It can serve as a framework for recognizing other types of minorities than the ethnic, religious, or linguistic minorities in a narrow sense. By giving a sociological account of what a minority is, the Special Rapporteur's definition allows to identify any sort of minority within society. Therefore, it also allows to identify the social dynamics taking place therein: those which have reached the sociological consistency that makes proper social tendencies.

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[880] *Ibid*., p. 96. More precisely, F. Capotorti's definition of a minority is based on four distinct criteria. Firstly, as he sates, minorities are "distinct groups possessing stable ethnic, religious, or linguistic characteristics that differ sharply from those of the rest of the population". In other words, they are groups of individuals which distinguish from other groups of individuals for having specific characteristics of a religious, ethnic or linguistic nature. Secondly, they "must be numerically inferior to the rest of the population". An element that joins, but does not equate with, the position in society in a power narrative: the dominance of the group in the global social landscape, the power to influence the socio-institutional dynamics of society, or be independent from the latter, in the pursuance of their aims. And, eventually, they must be endowed with a specific will to preserve their characteristics, which "generally emerges from the fact that a given group has kept its distinctive characteristics over a period of time". *See*, *ibid*. Furthermore, the Special Rapporteur qualifies this last feature as subjective, and argues that it can fuel narratives against minority recognition. That is, it can serve to neutralize the application of article 27 regarding groups which may qualify as minorities. For that reason, he adds that "[o]nce the existence of a group or particular community having its own identity (ethnic, religious or linguistic) in relation to the population as a whole is established, this identity implies a solidarity between the members of the group, and consequently a common will on their part to contribute to the preservation of their distinctive characteristics". *See*, *ibid*.

[881] *Ibid*., Annex I, p. 105.

[882] And prohibits discrimination on any of these grounds. Article 27 ICCPR states that "[i]n those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language".

Therefore, the 'minority' concept as defined in international law seems to set a framework for states to assess and recognize the social tendencies taking place within their jurisdiction. As defined by F. Capotorti[883], the concept of minority allows for recognizing the tendencies emerging and taking place within society. On the religious dimension, it provides a concrete framework by which to determine which religious practices and behaviors have become part of society as such. It provides a rationalized framework that distinguishes the individual tendencies from those behaviors and practices which have reached the level of cogency that calls for them to be included into society.

Indeed, this framework allows to determine which behaviors became social tendencies composing society, and sort out, at the same time, the individual tendencies which pose as a challenge to the latter's social order. It allows to distinguish between those acts, practices and behaviors to include into the centre, and those which remain at the periphery. Parting from this recognition, in application of the tenets of the sociological school of jurisprudence, state authorities would be able to distinguish which religious practices, acts and behaviors to endow with the guarantees of the individual right to religious freedom. Whether in the centre or on the periphery, when given acts, practices and behaviors reach the level of cogency represented by F. Capotorti's criteria, they call for the state to address them. And—when they are of a religious nature—to grant them the guarantees provided by the right to freedom of conscience and belief.

When constituting social tendencies of their own, the religious practices which are at the periphery of a society or simply forbidden by state laws and regulations cease to be 'deviant' practices or subjects of social contempt. By the fact that they crystallize a deep social

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[883] In another—later—report treating with the same issue of defining a minority, Special Rapporteur J. Deschênes proposed to include three further elements. First, citizenship—minorities are, in his view, composed of state nationals. Second, the size of the group that a minority composes. Indeed, he contends that "a minority should (…) not be so small as to tap a percentage of public resources entirely out of proportion with the benefit which society should derive from the expenditure". *See*, UNECOSOC, Report, 14/05/1985, Proposal concerning a definition of the term 'minority', E/CN.4/Sub.2/1985/31, para. 77. In his view, a minority should "number less than half the population of the state". *Ibid*., para. 171. Third, his approach takes into account the power relations between communities. For that end, he includes the "non-dominant situation" as one of the characteristics of a minority. *Ibid*., para. 171. Building on these considerations, J. Deschênes defines a minority as a "group of citizens of a state constituting a numerical minority and in a non-dominant position in that state, endowed with ethnic, religious or linguistic characteristics which differ from those of the majority of the population, having a sense of solidarity with one another, motivated, if only implicitly, by a collective will to survive and whose aim is to achieve equality with the majority in fact and in law". *Ibid*., para. 181.

adherence, they put society and state authorities before a sort of *fait accompli* that requires a more comprehensive and nuanced treatment. Consequently, they become part and parcel of the society in which they take place.

In other words, any act which appears to be spread enough into society calls for state intervention, whether through legal regulations or policy management. In the realm of religious freedom, the said intervention takes place through the deployment the right to religious freedom, whether for protection or interdiction purposes. Therefore, following the minority framework set by F. Capotorti, state authorities would be able to recognize the proper—religious—tendencies taking place within their jurisdiction and distinguish them from those novelties which prove to still be alien to their established social order. Following, granting to these tendencies the guarantees of the right to freedom of religion and belief would yield in a better respect of the right's intended outcomes, and a better fulfillment of the requirements set by individual religious freedom. Furthermore, proceeding with this framework leaves society free to evolve, change, mutate with time; and allows state authorities, as managers of the life of the Polity, to be in line with the latter's developments.

Thus, applying the tenets of the sociological school of jurisprudence as detailed *supra* suggests a minority approach to religious diversity and pluralism. This approach accompanies, in turn, the development and evolution of society—on its religious dimension—, at the same time as it endows the right to freedom of religion and belief with the maximal degree of guarantee. It allows society to develop and change over time, to include those religious practices and behaviors previously considered as deviances, and which eventually integrate, due to their sociological consistency, the established social order of society.

In fact, this approach allows for both state authorities and individuals to gradually accompany the changes taking place within society. It progressively increases the level of protection conveyed by religious freedom, and gradually expends the spectrum of religious practices to protect. Consequently, it tends to endow the right to religious freedom with its maximal scope.

In addition, its compatibility with domestic systems of interaction between state and religion would drive the latter to address adequately the religious issues that society faces. Without imposing one vision or one set of regulation to adopt by all states at the same time; without leaving the issue for each state to regulate individually, the approach of the sociological school of jurisprudence would provide a guide for the regulations to adopt. Its effects, indeed, would be double: deepening the role of the state towards religious groups and minorities by connecting the regulation process with the actual dynamics of society, and accentuating the religious neutrality of the state.

D. Sociological interpretation of religious freedom and domestic state and Church relationship systems: As explained *supra*[884], state and Church relationship systems tend to part into two blanket models when it comes to addressing and regulating religious plurality. The first model, illustrated *supra* through the cases of Poland and the United Kingdom, tends to recognize religious communities and endeavors to cooperate with them in order to provide for their needs. The second model, exposed through the examples of France and the United States, tends, on the contrary, to leave believers and religious communities free to evolve by themselves, and provide for their needs by themselves. Following, implementing the minority approach commanded by the sociological interpretation of religious freedom would command a differentiation. It would first require taking into account the proper stance that states adopt regarding religion and religious minorities.

On the one hand, by recognizing religious groups and communities, the first model of interaction between religion and the state offers a fertile ground on which to deploy the minority approach of the sociological school of jurisprudence. In this model, the state and its services recognize and interact with religious communities. They provide for their needs, provided that the said religious communities fulfill the legal criteria presiding over their recognition. Therefore, the minority approach would amount to including, into this legal framework, any group of individuals that constitutes a religious minority. In other words, within this model of state and Church relationships, state authorities provide for the needs of the religious communities legally recognized. Thus, in order to face the growing religious

[884] Part I—Chapter 1—III and Part II—Chapter 3.

diversity, the criterion by which to recognize a religious community, within their framework, would be the minority. That is, the fact that a given religious group or community of believers amounts to a proper minority as defined in international law. Whenever a said minority comes to crystallize, the state would recognize it as a religious community and consequently deal with it as it deals with the other religious communities priorly recognized. In fact, the impact of this framework is an enlargement of the criteria of state recognition: whenever a religious group amounts to a minority, states would be under an obligation to recognize them, and provide them with the minimal treatment granted by their domestic law[885].

On the other hand, the model which conceives of states as guarantor of public order exclusively leaves religious communities and the believers composing them free to evolve in society, to organize their life and pursue their needs as they see it fit themselves. That is, bearing public order as unique focus, the state does not provide for religious communities, nor does it fulfill any of their needs. Individuals and religious communities are thus individually responsible when it comes to pursuing their cosmovision. Therefore, the fact that a group of individuals forms an integrated religious group or amounts to a minority, in the meaning of F. Capotorti, is irrelevant for the state, since the sole focus of the latter is the preservation of public order. In this perspective, the minority approach would appear to be irrelevant for the states adopting this model of state and Church relationships system.

That being said, by their focus on public order, these states dwell and consider individual acts and individual practices. In this model of state and Church relationships, individual acts and practices remain social facts that states assess from the perspective of public order—especially when they aggregate a plurality of individuals. When they crystallize a group of persons, these practices eventually make a social tendency within society, that the state assesses from a public order perspective. In other words, when religious acts and practices

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[885] This recognition does not command that the newly recognized communities enjoy the same treatments or benefit from the same degree of cooperation as those communities priorly recognized by the state. More precisely, state authorities, within this model, are still able to adjust their system to the communities considered, and establish differences in the degree of their cooperation in the cases where such a difference is conceivable. For instance, that is how the Spanish system of 'Aconfesionalidad' is designed: the level of cooperation that the state grants to religious communities varies according to the specific criteria, which include the historical presence of the considered communities within the Spanish society. *See*, Pleno, STC 46/2001 of 15 February 2001, Amparo application n° 3083/96, Fundamentos Jurídicos 3-9. *See also,* DÍEZ DE VELASCO (J.), « The Visibilization of Religious Minorities in Spain », *Social Compass*, 57(2), 2010, pp. 246-248.

aggregate a plurality of individuals, they become a proper social tendency which integrates the established social order of society. Through this angle, state authorities are able to address and regulate them, in pursuance of their mandate of managing and regulating society.

In both cases, both models of state and Church relationships face acts and practices. The unique difference is that one considers the community materialized by the said acts and practices as a separate legal entity—the minority. The other, instead, only considers the acts and practices by themselves. As explained above, when a practice is embraced by a certain group of people, *a fortiori* consecutive to such a deep adherence as that to which religious acts are subject, the said practice becomes part of the social tendencies of society at the time considered. It tends to integrate the established social order reigning within the latter in such a way that its legal prohibition would amount to breaching the right to religious freedom. In other words, when specific acts or practices gather the consensus of a large social group, they come to integrate the corpus of social tendencies making society at a given time. They tend to materialize the aspirations of a group of people in a way that prohibits their strict prohibition. In that situation, the causes upon which they would be prohibited—namely contradicting the established social order—cease to exist. Consequently, whether making a minority *stricto sensu*, as defined by F. Capotorti, or a *de facto* minority, in the meaning of a social group not recognized by law, the practices crystallizing both groups of individuals would be the core subjects of state's regulations. In matters engaging groups and communities, their regulation would go through the specific procedures provided by the state and Church relationships system in force. Thus, when the latter recognizes religious communities, the said groups would be granted the status of religious community for constituting a religious minority living within the jurisdiction of the state. When the state and Church relationship system only focuses on public order and individual religious freedom, the regulation of thesis groups would take place on the grounds of public order exclusively, bearing in mind that the 'public order' comprises the acts and practices that make the said groups. This framework of action, which results from the application of the tenets of the sociological school of jurisprudence, provides a further nuance in the regulation of religious freedom. It deepens the state's treatment of religion and, when applicable, religious communities, providing further

protection for believers. In other words, it deepens domestic systems of interaction with religion, and elevates the standard of protection of the right to freedom of religion and belief.

At the same time, the framework yields in connecting state regulations to the actual state of society, to the social dynamics as they take place. Indeed, at the same time as it elevates the guarantees provided by the right to freedom of religion and belief to their highest extent, it allows state authorities to accompany the evolution of society. By connecting the regulation processes with the actual dynamics of society, it deepens the acuteness of state intervention regarding religious diversity, and yields in a better execution of the state's mandate of social regulation.

Furthermore, this minority approach rationalizes the state's action when regulating religious realities. It yields in emptying state regulations from any consideration of a political or ideological nature, which can prove to be detrimental to individual freedoms, individual rights, and the individual right to religious freedom. In other words, it accentuates the religious neutrality of the state, as it leads state authorities to adopt public order[886] as sole criterion for granting or prohibiting religious practices. It yields in enhancing the respect for the emerging international human rights standard of state neutrality regarding religion[887].

The minority approach, as a framework of the sociological school of jurisprudence for approaching pluralism and diversity through the international human right to religious freedom, would lead state authorities to consider religious acts and practices from the single aspect of public order and individual liberties. Thus, it leads to accompanying the dynamics of society as they emerge, prosper or vanish, consistently respecting international human rights standards. It yields in a gradual inclusion of religious diversity as the latter develops and moves, progressively, from the peripheries to the centre of society—from being a sum of

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[886] Indeed, the approach operates a balance between individual tendencies and the established social order by granting the fullest guarantee to those acts and practices which do not contravene the latter. The the established social order is a factual situation of a sociological nature, public order tends to be a legal construct, an ideal state of facts that commands measures to be taken. Thus, the two notions overlap each other, they are, in fact, the same reality read from two distinct angles. One is the sociological angle; the other is more legal. Therefore, public order and established public order tend to operate as synonyms in the minority framework discussed, since the latter is a multidisciplinary framework and fecundates law with sociology.

[887] *See*, TEMPERMAN (J.), *ed.*, *State-Religion Relationships and Human Rights Law. Towards a Right to Religiously Neutral Governance*, Leiden, Martinus Nijhoff Publishers, 2010, 382 p.

deviances to making actual social tendencies. It tends to accompany the changes of society, conceived as a sociological entity, with its boundaries and erecting principles moving through time.

3. On Pluralism and Oligopoly: two brief observations.

As it has been discussed in the previous Chapter, religious diversity is a social reality in constant evolution. Pluralism, conceived as the normative system aimed at including diversity, tends to constantly oscillate between individual liberty and social order without ever reaching these two ends[888]. Therefore, pluralism appears, by way of necessity, to be an oligopoly. More specifically, religious pluralism appears to be a religious oligopoly. The minority approach which stems from the sociological school of jurisprudence tends to provide an objective criterion for setting the oligopoly. By its minority approach, or its corollary, the social tendency, the said framework prevents states from causing undue discriminations or favoring any religion over any other. The oligopoly that it yields to can be described as an oligopoly of social tendencies (A). That is, a social configuration which includes religious diversity and, at the same time, accompanies objectively the mutations of society by setting a basis upon which the latter can evolve. In short, it rationalizes the treatment of religion by the state. Thus, the legal hermeneutics that animate it appear to be pragmatic and democratic, as they part from the field realities (B).

A. Oligopoly and integrated society: It has been described *supra* that pluralism can only be an oligopoly since the reference point of its regulations is society, and society requires a social order to actually exist. With the minority approach, state authorities would confront the religious minorities present within their jurisdiction, or the religious facts that crystallize into proper social tendencies. In this approach indeed, the 'minority' is conceived as a legal category gathering a set of people which have common religious practices, acts or a similar religious behaviors. In other words, 'minority' is the legal synonym of social tendency, the legal category by which states recognizing religious communities interact with the latter. It is the legal category which encompasses any social tendency embedded into society.

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888 For a discussion of these idea through the Religious Market Economy framework, *see*, Part III—Chapter 1. Between Society and Individuality: the Pendulum of Pluralism and the Diversity Clock.

The reason for granting the guarantees of the right to freedom of religion and belief to these minorities or social tendencies is their embeddedness into society. For being consistently present within society, their existence modifies by itself the established social order that structures the latter. Thus, in order for society to be integrated, and for state services to suitably address the needs of the population, the role of the state may be to adopt a positive stance towards them, and adapt its laws and institutions to their claims as much as possible. When the latter religious communities exist in the public realm, their inclusion in the general framework of state and Church relationships, as suggested by the minority approach, would command the said adjustments to be carried out. When the state does not recognize religious communities or aims at maintaining them in the private realm exclusively, adapting the state's services to the actual sociological configuration of society would command, likewise, the said adjustments to be done. The said adjustments comprise, for example, the organization of the judiciary; the working schedule; the organization of teaching… The concrete modalities would depend on the actual features of the system at stake, as well as the religious practices considered.

However, if this approach contemplates minorities, it does not comprise any individual religious practice. Those practices and behaviors which remain at the periphery of society and its social order—such as consumption of prohibited substances in certain societies for example—remain outside the scope of the framework. As a consequence, the form of pluralism that emanates from the latter is circumscribed to those practices and behaviors which are embedded into society. It is circumscribed to those practices and behaviors which crystallize minorities or social tendencies. In other words, the form of pluralism that emanates from the minority approach is that of an oligopoly of social tendencies, expressed in the form of (*de facto* or *de iure*) minorities.

As explained in Part II, societies exist on an established social order. Without this social order, made of common beliefs, common values and common practices, there is no society; only a sum of individualities spread over the territory. Such a situation neutralizes any will of regulation, as the latter stems from the need to order society. Furthermore, as explained, the

duty of states to respond to the needs of each individual, in that configuration, proves to be a high burden that may be unlikely to be fulfilled. In that situation, indeed, the state would have to respond to each claim and need individually expressed. Eventually, not respecting the established social order, for individuals, tends to result into specific outcomes that are detrimental to individual freedom and, by extension, religious freedom itself. The capacity of a society to include diversity seems, therefore, to be limited by definition.

The minority approach would thus include the highest number of the elements composing diversity. It tends to integrate society to the highest extent; and pluralism tends to receive its largest extent. As integrated societies seem to be, by definition, oligopolies, the minority approach, by the rationalization it operates in the management of diversity, appears as an objective framework by which to organize religious diversity. It tends to deprive the treatment of the latter from any political or ideological consideration, which, as exposed in Part II *supra*, can be detrimental to the human right to religious freedom.

B. Rationalization, democracy and pragmatism: In addition to the above considerations, focussing on society, as it appears at the given time, is a pragmatic approach that tackles social issues as they appear at the given time. Likewise, this pragmatism connects the regulation processes with the individuals composing society, thus taking into account the needs and the ideals that they express through their behavior. In that, the minority approach is also a democratic interpretation of the right to freedom of religion and belief, as the said interpretation is anchored into society as it appears to be at the time considered.

Eventually, this focus on society recognizes and adapts to the evolutions that take place within the latter. It fully connects with the moving essence of society; it recognizes that society is in perpetual movement, and consequently addresses its evolutions. In other words, it allows to organize and manage social issues as they emerge or change.

Pragmatism and democracy are, indeed, the two guiding principles of the minority approach. One the one hand, the minority approach is a pragmatic bottom-up approach, which contrasts with the dogmatic top-down approaches that make the actual interpretations of the right to

religious freedom as detailed in Part I. On the other hand, it is a democratic bottom-up approach which, close to society and its individual members, preserves both society and individual freedom at the same time.

Regulating religious diversity through *de iure* or *de facto* minorities—in the form of social tendencies—results in operating constant dialectics between law and society, between social dynamics and regulations. The said dialectics, in addition to putting close ties between society and the regulations organizing it, allow also to accompany the changes of society. They allow to suitably address the social dynamics taking place between the centre and the periphery. In other words, they bring the law, law making processes, lawmakers and state authorities to address the actual state of society as the latter appears to be at a given time. By doing so, the minority approach reconciles law with its primary function of regulating society—it reconciles law with its primary nature, which, as expressed by the sociological school of jurisprudence, is an instrument of social regulation connected to the social realities that it intends to regulate.

These dialectics between law and society put the judiciary in a central position. Given the basic legal provisions regulating fundamental and human rights are already set, it is the role of the judges to apply them to particular cases. That is, being carved in the marble of the law, in domestic Constitutions and international treaties, fundamental and human rights come to confront the situations that take place on the field. For this confrontation mainly takes place through litigation, the forum in which it takes place tends to be the courts of law. For that being so, the judges tend to be the ultimate arbiters, those who address the facts and context of the litigation, those who settle the litigation and hence endow rights and laws with further content.

In this view, judges are the agents which deal with the issues as they arise in the field. They are the ultimate reference which settles the content of the right and the methodology to follow when resolving the issues presented—that is, when adjudicating. Following the minority approach exposed in the previous sections and pages, it is within the judiciary that would take place the dialectics between the centre and the periphery, the determination of which practices

and behaviors reach the level of social tendency, which of the latter crystallize proper minorities in the meaning of F. Capotorti. It is within the judiciary that the standards of guarantee of the right to religious freedom are settled. Judges are the proper agents who set the legal dynamics that accompany society in its constant movement of mutation.

Such a judicial treatment requires adjudication to be grounded in field data. That is, it requires a precise sociological mapping of the litigation, following a case by case logic. In addition, it requires to explore two key issues before ruling on the case. The first is that of whether the restricted practices question the established social order of society. In litigations revolving around religious freedom, it is often an individual applicant who drives state authorities before a court of law, complaining of a restriction to his religious freedom enacted by the said authorities. Accordingly, the adjudication may first determine where the said practices are located in the continuum leading from society's centre to its periphery. Then, it is the proportion that they represent within society that has to be determined—that is, whether or not they reached the level of social tendency. Depending on what this double exploration leads to, the case can be treated, and a solution to the litigation can be issued.

On various occasions, the ECtHR has been confronted with state measures and treatments forbidding individual applicants from wearing a headscarf for religious reasons. The applicants at stake conceived of their garment as a religious practice—they conceived it to be mandated by their religion. In other words, they were proceeding to a religious practice, which was restricted by state authorities. The Court, then, developed its value approach when adjudicating on the case, and delivered judgements which drove the many critiques discussed in Part I.

In these cases, the applicants, according to their lines of argument, were wearing the veil for religious reasons. They were exercising the right guaranteed by article 9 ECHR. State authorities—and later the Court, when assessing the right—restricted this exercise on the ground of the rights and freedoms of others. In other words, the restriction pronounced, and upheld by the Court, was based on the fact that the said practice put the others' rights and freedoms in jeopardy. It was at odds with public order, conceived as the factual exteriorization

of the values embraced by the Court. As it was discussed in Part I *supra*, this approach limited the right of the applicants. Thus, it delivered, through these judgements, concrete examples of its impact on religious freedom: a restriction of the degree of individual religious freedom and a reduction of the span of religious diversity covered by article 9 ECHR.

The minority approach amounts, precisely, to avoiding these two consequences. Applied concretely in litigation, it also yields on a different treatment of the claims, the parties' arguments, and the religious manifestations at stake in the litigation. Applied to the issue of religious garments, it would lead the Court to adopt a new reasoning, more grounded in the field reality and bereft from the negative characteristics of its classic approach. For example, that of ignoring the concrete circumstances and characteristics of the individual applicants.

Chapter 3. Minority Approach in Litigation: an Illustration.

The wearing religious garments has been a recurring issue in human rights case-law. More precisely, covering the head pursuant to the Sikh and Muslim faiths has been a central issue for human right protection bodies to confront. Within the European context, the issue is at the source of an abundant jurisprudence, which participated to setting the legal regime of religious pluralism within the Council of Europe[889].

Ever since the first case examined by the ECtHR on this topic[890], the Muslim veil has been a particularly recurrent point of litigation. It gave way to many key judgments in relation with the legal content and the scope of article 9 ECHR. Each case examined raised specific and basic elements for the Court to settle. And, even if these judgments concerned mainly the Swiss, French, and Turkish contexts, they participated to setting the basic legal contours of European religious freedom as such, as they were an occasion for the Court to define the scope of article 9 ECHR.

In defining the scope of article 9, the Court limited its guarantees to those acts and practices which are in keeping with the European values considered to be at the heart of the European Convention. In other words, the religious pluralism set by the Court, through article 9 ECHR, seems to be exclusively limited to those acts which fulfill the said values. As it has been argued, such an approach tends to decrease the degree of religious diversity that the European context can admit, and the degree of religious freedom that individuals enjoy. Furthermore, it even seems to limit the evolution of the European society on the religious dimension.

Applying the minority approach, in a litigation for example, follows three steps. The first step is to determine whether the practice crystallizes a minority or a social tendency, using F. Capotorti's criteria of a minority. By making a sociological account of a minority, parting from the individuals' own sense of belonging, the criteria laid by F. Capotorti's definition

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889 *See*, Part I—Book I—Chapter 1. The European Court of Human Rights: an axiological approach.

890 Commission, Decision on the Admissibility, 03/05/1993, *Karaduman v. Turkey*, Application n° 16278/90.

approach the minority concept from a socio-constructivist perspective—it intends to determine whether a minority exists, parting from the attitude taken by those individuals who compose it.

As explained in the previous chapter, when a given practice crystallizes into a minority, or reaches the sociological consistency of a social tendency, it tends to integrate the centre of society as part of the latter's evolution. That being so, its restriction would breach the right to religious freedom of those who embrace it, except if it structurally contradicts the social order in force within society and is, therefore, incompatible with the social dynamics in force within the latter. In other words, when a given practice crystallizes a social group which fulfills the criteria put forth by F. Capotorti's, the practice becomes part and parcel of the society in which it takes place. And, as a consequence, its restriction would be lawful only if the practice poses as a structural contradiction to the premises of society. By contrast, when the restricted practice at the heart of the litigation does not crystallize into any minority, it remains an individual fact proper to the individual or the group of individuals who proceed to it. State authorities can find to forbid its manifestation through the limitation clause of the right to religious freedom, especially when it poses as a structural challenge to the established social order.

Therefore, in order to know whether a given practice poses a challenge, or a structural challenge to the established social order, its position within the spectrum leading from society's centre to its periphery has to be settled. In human rights litigation, judges have to assess whether a restriction to the right to freedom of religion and belief is in keeping with the limitation clause enshrined within the same right. Therefore, the minority framework warrants, as a second step in the adjudicating process, to explore where the practice at stake lies within the spectrum leading from the centre of society to its periphery. That is, to locate the practice at stake within its context—the immediate context of the case as well as the larger social context. In order to do so, judges have to determine the concrete difficulty that the said religious practice poses to the established social order. And, for that purpose, a confrontation can be operated between the arguments brought by the defending government in support of their measures and the actual established social order of the society in which the practice takes

place. The said confrontation will, indeed, expose how domestic authorities frame the religious practice they have restricted, and to which degree the said practice poses as a challenge to the established social order—that is, whether it is structurally incompatible with the latter or can be accommodated within it. The operation can be carried out by confronting the government's narrative to a sociological, data driven, account of the established social order. Thus determining whether the religious practice at stake poses as a challenge to the established social order, and to which extent it so does, its position within the spectrum of social acceptability will appear—its position within the spectrum leading from the centre to the periphery will appear.

After determining these two aspects, the last step of the minority approach can be deployed and a solution to the case can be reached. More precisely, when the restricted practice at the heart of the litigation does not crystallize into any minority, nor any social tendency, it remains an individual fact proper to the individual or the group of individuals who proceed to it. State authorities can find to forbid its manifestation through the limitation clause of the right to religious freedom, especially when it poses as a structural challenge to the established social order. However, if it crystallizes a social group which fulfills the criteria put forth in F. Capotorti's definition, it becomes part and parcel of the society in which it takes place. And, as a consequence, its restriction would only be legitimate if it poses as a structural contradiction to the premises of society.

As explained in the previous chapter, when a given practice crystallizes into a minority, or reaches the sociological consistency that makes a social tendency of it, it tends to integrate the centre of society as part of the evolution of the latter. That being so, its restriction would breach the right to freedom of religion and belief of its adepts, except if it structurally contradicts the social order in force within society. In that case, it becomes incompatible with the social dynamics in force within the latter.

Henceforth, whenever the religious practice at stake in the litigation proves to reach the sociological consistency of a minority or a social tendency, state authorities would stand before a duty to endow it with the same treatment as the other religious acts and practices that

take place within society. That is, in that case, state authorities would be under the obligations put forth by the right to freedom of religion and belief. They would be under the obligation to avoid any impediment to its expression, even by adapting the functioning of state institutions and public services; or to grant to the corresponding minority the privileges consented to religious groups and communities under domestic law[891].

Assessing the cases concerned with religious dressing through the minority approach would lead the ECtHR to first settle whether the practice crystallizes a minority or a social tendency within its jurisdiction. For its jurisdiction covers its member-states, the Court would examine whether the practice crystallizes a minority or a social tendency within all its member-states taken as a whole. For the issue of the islamic headscarf, for example, the Court would have to determine first whether this practice materializes a minority within the society formed by its member-states (I). Once this determined, it would then locate the practice within the social spectrum ranging from the centre of society to its periphery (II). And after doing so, it can reach a conclusion, and rule upon the case (III).

I. The Islamic Headscarf as a religious Practice within Europe.

Within the jurisdiction of the Council of Europe, according to a 2011 census conducted by the Pew Research Centre[892], 3 out of the 46 member-states to the ECtHR count with a Muslim majority population. Namely, Albania (with 82.1%), Azerbaijan (98.4%), and Turkey (98.6%)[893]. In addition, other countries around the Council of Europe also count with various proportions of Muslim population within their overall population: Bosnia-Herzegovina (41.6%), the Republic of Macedonia (39.5%), Montenegro (18.5%), Bulgaria (13.4%), Georgia (10.5%), France (7.5%), Belgium (6.0%), Austria (5.7%), Switzerland (5.7%), Netherlands (5.5%), Germany (5.0%), Sweden (4.9%), Liechtenstein (4.8%), Greece (4.7%), United Kingdom (4.6%), Denmark (4.1%), Serbia (3.7%), etc. These statistics tend to show that, within the jurisdiction of the Court, the proportion of individuals that identify as

[891] For example, privileges concerning funding, teachings in private or public schools, etc.

[892] Pew Research Centre, *Table: Muslim Population by Country* (link), 27/01/2011 (Last accessed: 27/11/2023).

[893] *Ibid*.

Muslims is numerically inferior to the rest of population composing the Council of Europe. Therefore, also, it can be argued that this position puts them, by a *de facto* consequence, in a non-dominant position.

In addition, the islamic headscarf seems to be acknowledged by the Court as a religious manifestation. For example, when it states, in *Dahlab v. Switzerland*[894], that "it cannot be denied outright that the wearing of a headscarf might have some kind of proselytising effect, *seeing that it appears to be imposed on women by a precept which is laid down in the Koran* and which (…) is hard to square with the principle of gender equality" [emphasis added], the Court seems to consider implicitly that the islamic headscarf is a religious manifestation in the meaning of article 9 ECHR. In the Court's reasoning on the case, the religious aspect of the manifestation examined was put as a premise. In other words, without discussing the religious nature of the act itself, the Court admitted implicitly the latter was a manifestation of a religious nature. Then, the recurrence of this consideration in the later cases dealing with same issue[895] tends to indicate that the Court considers the veil at the heart of the latter as a religious practice, a religious manifestation—in fact, a specific characteristic of a religious nature.

Even more so, the number of cases involving restrictions to the wearing of such garments, especially for value-related reasons, further suggest two conclusions. First, that the practice differs sharply from the common practices of the rest of the defending states' populations. And, second, that it denotes a specific will, from those who proceed to it, to preserve their religion and religious practice.

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[894] ECtHR, Second Section, decision, 15/02/2001, *Dahlab v. Switzerland*, Application n° 42393/98, p. 13.

[895] *See*, also, ECtHR, Grand Chamber, Judgment, 10/11/2005, *Leyla Şahin v. Turkey*, Application n° 44774/98; ECtHR, Fifth Section, Judgment, 26/11/2015, *Ebrahimian v. France*, Application n° 64846/11; etc. In fact, in its development of the legal regime making article 9, the Court enacted a prohibition for states to "assess the legitimacy of religious beliefs or the ways in which those beliefs are expressed". *See*, ECtHR, Chamber, Judgment, 29/09/1996, *Manoussakis and Others v. Greece*, Application n° 18748/91, para. 47. From that follows that the Court does not really discuss the religious nature of a specific act—it seems to consider as a religious practice every practice which the applicant considers so. It takes this consideration as a premise for the legal assessment of the case. In that, it also seems to adopt a socio-constructivist approach on the realities it tackles in the adjudication process.

This sociological *tour d'horizon* on the islamic headscarf, as it appears in the Court's jurisprudence[896], indicates that the wearing of the headscarf, as a religious practice, fulfills F. Capotorti's criteria of a minority. A sociological reading of the ECtHR's judgements on the issue reveals that, as a practice, the islamic headscarf is a specific characteristic of a religious nature which differs sharply from the general practices taking place within the states composing the Council of Europe. Furthermore, the practice tends to gather a group of people which is numerically inferior to the rest of the population of the Council of Europe, hence in a non-dominant position, which is endowed with a specific will to preserve this religious practice over time. Being so, the wearing of the islamic headscarf crystallizes, as a practice, a religious minority within the Council of Europe. Consistent with article 9 ECHR, states ought, then, to confront this manifestation with the grounds laid in the second paragraph of the said article.

II. Islamic Headscarf and Established Social Order.

Cases such as *Dahlab v. Switzerland*, *Leyla Şahin v. Turkey* and *S.A.S. v. France* have revealed saliently that state authorities tend to adopt restrictions to the applicants' right to freedom of conscience and religion on grounds that exceeded the intrinsic meaning of the limitation grounds listed in the second paragraph of article 9. In better words, they revealed that state authorities tend to adopt a broad understanding of the limitation grounds when restricting the practice at stake.

In *Dahlab v. Switzerland*, the Swiss government argued that "the measure prohibiting the applicant from wearing an Islamic headscarf was based on the principle of denominational neutrality in schools and, more broadly, on that of religious harmony"[897], which the Court comprised into "the rights and freedoms of others, public order and public safety"[898]. In *Leyla*

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[896] A sociological reading of the Court's judgments gives only a superficial image of the realities contemplated. A proper sociological research on the issue would shed more light on the actual dynamics that make the religious practice at stake. That is, a sociological exploration of the issue, using proper sociological methods, would go further than a *tour d'horizon*; it would go beyond a mere sociological reading of the Court's judgements. Anchoring the practice at stake within its sociological and ontological contexts, it would better explore whether the practice actually crystallizes a religious minority.

[897] *Dahlab v. Switzerland*, p. 9.

[898] *Ibid*., p. 13.

Sahin v. Turkey, the defending government argued that the restriction aimed at "maintaining public order in the universities, upholding the principle of secularism and protecting the rights and freedoms of others"[899], *inter alia* because of the political meaning assigned to the applicant's headscarf[900]. In other words, the applicant's veil was considered to be a threat to state's secularism for conveying a political message that contradicted it, while secularism was the guarantee that the state of Turkey be a "liberal, pluralist democracy"[901] that abides by the Convention[902]. Because of its 'political essence', the applicant's headscarf was considered to contradict the rights and freedoms others, hence the restriction opposing it and the latter's upholding by the Court. In *S.A.S v. France*, eventually, state authorities adopted the restriction to the applicant's right based on two elements: "the need to identify individuals"[903] on the one hand, with the aim of protecting public safety[904], and that of "ensuring 'respect for the minimum set of values of an open and democratic society'"[905] on the other hand, translated as rights and freedoms of others[906].

By adopting such a broad understanding of the limitation grounds, both state authorities and the Court—during the assessment of the case—go beyond the law strictly speaking. As it was demonstrated in Part I *supra*, the wearing of the islamic headscarf was essentially forbidden for contradicting social values. The prohibitions were pronounced, thus, for socio-cultural reasons. The practice itself did not impede the functioning of public institutions and public services. It did not paralyze the activity of the state, its institutions or public services. Rather, they were considered to be at odds with socio-cultural patterns of society.

From these elaborations, from the argumentation followed by state authorities and the resign adopted by the Court, it stems that the wearing of the islamic headscarf, as a practice, is

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[899] *Leyla Şahin v. Turkey*, para. 82.

[900] *Ibid.*, para. 93.

[901] *Ibid.*, para. 91.

[902] *Ibid*.

[903] *S.A.S. v. France*, para. 82.

[904] *Ibid.*

[905] *Ibid*.

[906] *Ibid*.

located outside the centre of society. However, it does not clash with the functioning of state institutions, nor does it impede that of public services. As a practice, it is located at the immediate periphery of society—it is considered to contradict the latter on the socio-cultural dimension only. Therefore, as a practice, it seems to represent a sociological evolution of the established social order within the Council of Europe. It seems to be, in the framework of the sociological school of jurisprudence, an evolution of the established social order within the jurisdictions of the Court. In other words, for its consistency with F. Capotorti's criteria on the one hand, and due to the fact that it does not appear to structurally contradict the established social order on the other hand, the wearing of the islamic veil seems to represent an evolution of the socio-cultural premises of the society of the Council of Europe. It seems to represent a socio-cultural evolution that has taken place within the said society. Consequently, it is to be included within the scope of article 9. And this inclusion tends to operate slight adjustments to the Court's usual *modus operandi* in assessing and adjudicating upon religious manifestations.

III. Islamic Headscarf and the ECHR.

With settling the sociological status of the islamic headscarf, as a religious practice, and its location within the social spectrum leading from the centre of society to its periphery, it is possible to conclude on the litigation and issue the final findings on the case as a whole. Once locating the practice in its sociological context, it is possible to analyze the restrictions at the heart of the litigation, and deploy the legal reasoning that resolves the issues raised by the parties. In that view, reasoning over the case, while taking into account the sociological consistency of the practice, suggests to operate an adjustment in the approach to the latter.

Considering the wearing of the islamic headscarf as part and parcel of society evacuates the socio-cultural dynamics out of the adjudication process. It deprives the assessment of the religious practice at stake from any socio-cultural essence. It deprives the grounds of limitation of article 9 from any consideration related to the socio-cultural dynamics of society. In other words, it drains any consideration of a socio-cultural nature from the grounds of limitation listed in the limitation clause. In this perspective, the assessment of the case tends to revolve exclusively around the application of the law to the facts—the reality—at stake in

the case. By the same token, it also neutralizes any socio-cultural consideration invoked by the defending government to justify the enacted restriction.

In fact, it turns the litigation into a discussion on the law exclusively, consistent with the essence of law as an instrument of social regulation. A court of law, as the ECtHR, is indeed a forum where parties discuss the application of the law through a formal litigation. It is, therefore, at odds with any discussion on culture or social dynamics *stricto sensu*. As the sociological school of jurisprudence postulates, socio-cultural dynamics are the realm of society and culture, they are outside the realm of the law which focuses on regulating the latter.

With this drive, the Court would then examine each case in light of its own particularities. For example, in light of the state and Church relationship system in force within the state in which the religious manifestation is performed. As these systems differ in the way they interact with religion, religious manifestations may drive different modes of treatment. Wearing the islamic headscarf in France, for example, does not convey the same treatment as wearing the same garment in Spain.

Thus, keeping in mind that, as a practice, the islamic headscarf crystallizes a minority—and thus a social tendency—that has come to be part of the established social order within the Council of Europe, adjudicating on the issue would have lead to different results as the ones reached *Dahlab v. Switzerland* and *Leyla Şahin v. Turkey* for example.

In *Dahlab v. Switzerland*, the applicant's headscarf proved not to cause any issue related to public order as such, or to the functioning of state institutions and public services—above all the education system. As the Court states, "the inspector added that she [the applicant] had never had any comments from parents on the subject"[907], and that the "applicant pointed out that, after her appointment as a civil servant in the public education service, she had converted to Islam in March 1991 following a period of spiritual soul-searching. Since that time, she had worn a headscarf in class, a fact that had not bothered the school's head teacher, his

[907] *Dahlab v. Switzerland*, p. 1.

immediate superior or the district inspector whom she had met regularly. Furthermore, her teaching, which was secular in nature, had never given rise to the slightest problem or to any complaints from pupils or their parents. The Geneva authorities had consequently been in full knowledge of the facts in endorsing, until June 1996, the applicant's right to wear a headscarf. Only then, without stating any reasons, had the authorities required her to stop wearing the headscarf"[908]. In other words, the applicant's headscarf did not cause any type of prejudice to state institutions and to the public service of education. In fact, it stems from the case that it did not even require any adjustment, in terms of law for example. The applicant's veil was thus a social tendency that was part of the established social order within the Council of Europe; it is inconsistent with the value assessment that the Court applied to it. Consequently, if it had applied the minority framework to the religious manifestation in the case, the Court would not have upheld the restriction—it would have yielded to a violation of the applicants right under article 9 ECHR.

Likewise, in *Leyla Şahin v. Turkey*, the defending government, did not invoke any perturbation or actual jeopardy caused to the university. Nor did it invoke any type of actual prejudice caused to its institutions. It invoked a potential jeopardy to state secularism, through the political meaning of the applicant's headscarf. A threat of an abstract intellectual nature, devoid of concrete facts to back. But it still lead to a restriction of the applicant's right under article 9 ECHR. Thus, applying the minority approach to the case, the Court would have focused on the facts exclusively, without dwelling on any abstract elaboration erasing the applicant behind its reasoning[909]. And this proceeding would have lead to granting the applicant's right to wear her religious garment, therefore analyzing the restriction measure as a violation of her rights under article 9 ECHR.

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[908] *Ibid.*, p. 10.

[909] BURGORGUE-LARSEN (L.), DUBOUT (E.), « Le port du voile à l'université. Libres propos sur l'arrêt de la Grande Chambre *Leyla Sahin c. Turquie* du 10 novembre 2005 », *Revue Trimestrielle des Droits de l'Homme*, 66, 2006, p. 197.

Eventually, this approach might prove to face more complexities in other cases such as *Ebrahimian v. France*[910]. In this case, the applicant was contracted in a public hospital[911]. Therefore, her religious manifestation was understood to be at odds with French *Laïcité* system, which was conceived to be also applicable to those members of the hospital staff who were engaged on a contractual basis—that is, those among the hospital's staff who fall outside the status of public servant. Ruling on such a case would normally lead the Court to take into account the particularities of the French system of state and Church relationships, the way it is interpreted by domestic authorities—especially the courts—before adjudicating. However, in the case at hand, the applicant had seemingly adjusted her practice to the system in force: she replaced her headscarf by a medical head covering[912]. The litigation arised from the legal qualification of this head covering, as made by domestic courts. Indeed, for it "resembles a scarf or an Islamic veil, [the head covering] has been described as a veil by the majority of the domestic courts which have examined the dispute, and it is this latter term that the Court (…) use[d] in examining the applicant's complaint"[913]. In other words, the litigation arised from the fact that domestic courts—and later the ECtHR—viewed the head covering as a religious garment.

Therefore, putting aside any discussion on the features of the *Laïcité* system and whether it could allow state authorities to actually rule on religious realities *per se*, were the Court to embrace the minority approach, its legal reasoning on the case would slightly vary. In light of the fact that the practice was a social tendency within the Council of Europe, and given that it did not impede the public service—the hospital—from functioning; that is, given that the applicant's practice did not pose any obstacle to the execution of medical acts by the physicians of the hospital, the Court would have granted the applicant the right to wear such a head covering. The restriction measure enacted in this case would be considered as a violation of the applicant's right under article 9.

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910 ECtHR, Fifth Section, Judgment, 26/11/2015, *Ebrahimian v. France*, Application n° 64846/11.

911 *Ibid*., paras. 6-8.

912 *Ibid*., para. 46.

913 *Ibid.*

The examples explicating the application of the minority framework to the issue of the islamic headscarf could be multiplied even more. For example, applied to *S.A.S. v. France*, it would devoid the Court's assessment from any consideration on the 'sociability space'. The said concept was the cornerstone of the judgment; it rested exclusively on reasons of a socio-cultural nature; and attracted many critiques, as discussed in Part I, including that of some judges of the Court[914]. Adopting the minority approach in that case would have prevented any development regarding the concept of 'space of sociability', which revolves around socio-cultural considerations exclusively. Thus, the final solution to the case might also have been different.

In addition, the forgoing examples all took place in specific jurisdictions, which have adopted varying forms of the same state and Church relationships system. Switzerland, Turkey and France are indeed considered to be three nuanced variations of the global *Laïcité* approach[915]. Thus discussing the minority approach to the same type of issue in those jurisdictions endowed with a recognition system would explain in further detail the dynamics that the said approach entails.

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914 Judges Nussberger and Jäderblom's separate opinions pursuant to *S.A.S. v. France*; judges Spano and Karakas following ECtHR, Second Section, Judgment 11/07/2017, *Dakir v. Belgium*, Application n° 4619/12.

915 For a brief introduction the Turkish system, *see*, for example, BOZARSLAN (H.), « La laïcité en Turquie », *Matériaux pour l'histoire de notre temps*, n°78, 2005, pp. 42-49; LAMCHICHI (A.), « Laïcité autoritaire en Tunisie et en Turquie », *Confluences Méditerranée*, n° 33, 2000, pp. 35-57; MARCOU (J.), « La laïcité en Turquie : une vieille idée moderne », *Confluences Méditerranée*, n° 33, 2000, pp. 59-71.

General Conclusion.

I. Religious Pluralism and International Human Rights Law.

It is perhaps the primary conclusion to which this research leads that religious pluralism is a complex and technical issue to analyze and implement. And that it is so for two major reasons. Firstly, religious pluralism addresses religious diversity. In that, it addresses individual life aspirations in a context of augmenting diversity. In more precise terms, it addresses very subjective and personal notions as individual life aspirations in a context of growing—and structural—distinctions in the framing of these aspirations, and in means chosen for realizing them. By the fact that religious pluralism deals with such a diversity of individual inner and intimate aspirations, it puts into question the basis upon which society is constituted. That is, it questions the blanket matrix upon which a society can be built, which is, at the same time, common to all its individual members and allows each of them to pursue their own aspirations. There lays, at the forefront, thorny debates revolving around the social order upon which a given society is to be erected[916].

Secondly, religious pluralism aims, *in fine*, at determining the degree of individual liberty that individuals enjoy when behaving religiously. In other words, it aims at arbitrating between religious freedom as such, conceived as a set of behaviors, and the established social order that determines the span of the acceptable behaviors in society. This latter aspect of pluralism can appear to be contradicting human rights as a whole, in their effort to endow individuals with greater degrees of liberty. It can appear to contradict human rights as an idea, or in the objectives they are set to achieve. In other words, it can appear to clash with human rights insofar as they are designed to endow individuals with a greater degree of freedom than they may initially enjoy. And, moreover, even the very idea of ‘degree’ of freedom and ‘degree’ of

[916] In and of itself, this latter issue of established social order is complex and multidimensional, as it appears to be the meeting point of social values, social ideals—so individual desires regarding life in the polity—, and political ideologies. Being that so, it tends to put in a privileged position those actors endowed with political power or any prerogative that has an impact on the structure of society, especially the applicable law therein. Judges and lawmakers are, thus, key actors involved in the dynamics of religious pluralism—and pluralism at large.

liberty can be difficult to grasp with objective terms, concepts and categories of thought likely to be implemented in practice.

These two elements are at the heart of the normative system aimed at including the observable religious diversity that is called religious Pluralism. In other words, for its normative nature as a system, religious pluralism appears to be the normative emanation of the two issues exposed in the previous paragraphs. Or, better said, the system implementing decisions made by the competent agents[917] regarding the degree of religious freedom that is consented to individuals evolving in a religiously diverse context emanates from the conclusions that the said competent authorities settle regarding the two elements exposed. The implementation of pluralism tends to take place through a specific medium, which, in general, tends to be the law or public policy.

Given religious freedom is a human right; given that, consequently, it is originally a legal concept that endows individuals with a right to believe and practice their beliefs, the legal configuration of the right to religious freedom amounts to determining the concrete normative —legal—framework applied to religion in society. Said otherwise, the implementation of religious freedom goes through various legal regulations, as enshrined in acts and statutes and bills of rights, or as determined through case-law. Systematizing these different regulations, insofar as they apply to diverse religious manifestations, materializes the regulation of religious diversity itself. In other words, this systematization sheds light on the—legal— normative system which regulates religious diversity.

For being of a legal nature, the normative system thus obtained becomes the basis of every other normative system applied to religious diversity, for example the one implemented through public policy. Furthermore, for being of a human rights substance, the said normative system of a legal nature becomes the basis of every other piece of legislation applicable to religion within the domestic realm. For these reasons, every analysis of religious pluralism needs to start with an analysis of the international regulation of religious freedom. Interrogating and analyzing the developments of religious freedom as made by the

[917] *See*, the preceding footnote.

international human rights treaty bodies seems to be the key starting-point—the latter's findings and conclusions are the casuistic expression of the international treaties that they apply. Their developments on the international human right to freedom of religions and belief lays the normative content of the latter right. In turn, the normative system that emanates from these developments becomes, as a consequence, the expression of international human rights law regarding religious pluralism. And, thus being the expression of international law regarding religious pluralism, the system that stems from these developments becomes the basis of every system applicable within the domestic realm, whether of a legal nature, or public policy.

As Part I has shown, international law does not seem to provide for a uniform regulation of religious freedom, applicable to all states alike. It does not seem, either, to shed any legal regime for religious pluralism. A unique set of regulations or a unique legal framework applicable to all states alike does not seem to exist, even in human rights law. Instead, each organ in charge of applying the right to freedom of religion and belief seems to develop its own set of regulations, and thus its own framework of religious pluralism within its jurisdiction.

In fact, instead of legal frameworks *stricto sensu*, international human rights courts and treaty bodies tend to develop an approach regarding religious pluralism. As interpreters of the international human right to freedom of religion and belief, each one of them seems to adopt a specific stance regarding the latter and its congruent concepts of individual freedom, social order, society and diversity. These considerations tend to yield in distinct configurations of the right to religious freedom—and, by extension, of religious pluralism.

As it stems from its case-law, the ECtHR puts the emphasis on the social values that underly the European Convention on Human Rights as a whole. As explained in Part I, the said values seem to be historical legs of the European civilization; they do not appear in the Court's textual bases. They represent the desired patterns of interaction between society and religion within the Court's jurisdiction, either on the inter-individual dimension or that between states and individuals. By contrast, the IACHR examines the facts of the cases parting from the

victim's personal characteristics and then gives its final findings. Thus, the IACHR focuses on the elements that characterize the victims as human persons, from their social background to their individual beliefs, taking into consideration the 'plan' that these persons were following in the course of their life[918].

Eventually, the HRC does not seem to lay, in its Views, any particular approach to diversity or any clear indication on how states ought to interpret article 18 ICCPR in that regard. Instead, the Committee Views show a sort of agenda by which the latter pushes states to apply their own systems of regulation in the most pluralist way. That is, in a way that results in the highest degree of inclusion of religious diversity.

Confronted to the dynamics of contemporary religiosity, the three models of pluralism expose the limits of their pluralistic animus. The contemporary religious experience has been the subject of a shift, a transfer of meaning-making from religious authorities and institutions to individuals. Following this new paradigm, individuals became endowed with the power of elaborating their own beliefs, using a multiplicity of material—religious or secular—, as much as the practices that allow them to fulfill the said beliefs. Thus, the centre of elaboration of the religious experience shifted from religious authorities and institutions to individuals. The centre of reference for religion as a lived experience shifted from religious authorities, official texts and doctrines, to the individual narratives as individually elaborated. And, with these shifts, the very nature of the religious lived experience moved from its traditional settings to something of a spiritual nature. Driven by modern and post-modern individualism, this transformational process bears individual freedom in its heart. In other words, for religiosity—as a lived experience—to leave the realm of religious authorities and integrate that of individuals, the latter have first to be endowed with the freedom to elaborate their beliefs and practices by themselves. Therefore, this shift from religion to spirituality, from religiosity in the traditional meaning to religiosity as a spiritual individual experience, requires a high degree of individual freedom. In fact, it is, in itself, a constant call for a higher degree of religious freedom.

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[918] Such a complex—pragmatically sociological—assessment yields in depriving religion from any special status. This approach contrasts with the ECtHR's, which considers religion as a legal category of its own. *See* the developments made in Part I on Chamber, Judgment, 20/09/1994, *Otto-Preminger-Institut v. Austria*, Application n° 13470/87 and the subsequent judgments.

Seen from this perspective, the HRC's approach reveals that the latter seeks to avoid any confrontation with the issue of diversity and its dynamics. The HRC does not make any consideration, in its Views, regarding religious diversity or any issue that stems from it. The cases rather reveal that the HRC seems to be maintaining a certain distance regarding the issues involved in the cases, their legal resolution, and the extent to which the domestic legal settings affect diversity and religious pluralism. In other words, it stems from the Views given on article 18 that the HRC lacks agency in matters of religious diversity and pluralism.

Based on the same perspective, the ECtHR's approach, which puts the emphasis on the social order that exists within the European society, consists of a limitation of individual religious freedom. Or, in better words, the Court enshrines religious freedom within limits—the European social values—conceived as limits to the socio-behavioral expression of religious freedom. By this fact, it limits the expression of religious diversity and favors a kind of social *status quo* that clashes with the development of contemporary religiosity.

Eventually, in the IACHR's approach, for the victim's life plan is paramount in the Court's consideration of a case, religion becomes one characteristic of the victim among the other characteristics, a sociological feature that the Court takes into account when determining the violations suffered and their scale[919]. Proceeding this way puts the emphasis on individual liberty, and ignores any consideration which, stemming from society, might appear as an impediment to the full expression of individual freedom. Consequently, the IACHR tends to favor individual freedom in its arbitration between the latter and the established social order. Unlike the ECtHR, it seeks to maximize the freedom of individuals to act as they see fit for themselves, even in the area of religion. When the ECtHR tends to favor the established social order over individual freedom, by upholding the restrictions made to those religious practices that clash with the European social values, the IACHR tends to rather emphasize the individual freedom to adopt those religious practices that form part of the individuals' cosmovision. Even if it has not yet been confronted with religious practices that contravene the social order in force within society—such as consumption of prohibited substances for

[919] *Ibid.*

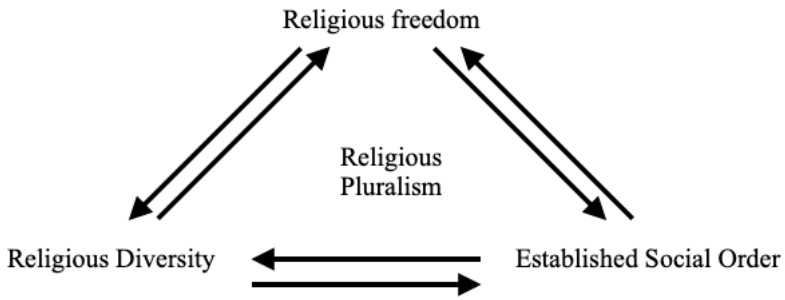
example—, the IACHR's jurisprudence tends to indicate that the Court is constantly seeking to maximize individual freedom, even at the expense of the established social order. Such a proceeding, which does not take into consideration the dynamics of the society in which individual freedom is exerted, puts, *in fine*, a high burden on states. Religious practices that contravene the premises of society tend to not fit-in within the latter, or be perceived as deviant practices. Thus, states tend not to provide for them, nor include them in the functioning of their institutions and services[920]. What is more, these practices may even lead to social backlashes which can pose as obstacles to their execution, and hence have detrimental effects on religious freedom as a whole. Being that so, even if it is still developing, the model proposed by the IACHR conducts *in fine* to the same impact as the ECtHR's. The latter's approach yields in an axiological oligopoly that limits the degree of individual freedom through the law; the IACHR's model conducts to a reduction of the degree of freedom by a sort of *de facto* consequence. Therefore, by the impact they convey on religious freedom, both models seem to put limits to the religious diversity developing within society.

Therefore, in order to avoid the said limitations, reflecting upon—and implementing—religious pluralism requires a further rationalization of the interpretation methodologies at the bases of its elaboration, with view to better integrating society and respecting religious freedom. In other words, the right to freedom of religion and belief calls for an interpretive methodology which rationalizes its rapport with the social realities to which it applies. A methodology which enables to operate a continuous link between religious diversity, as it exists at the given time, and the medium employed to regulate or manage it, which is the right to religious freedom. Sociology of religion has revealed that religious diversity is constantly evolving, constantly augmenting the complexity of the religious landscapes of contemporary societies. Consequently, a normative system which aims at integrating this diversity needs to meet the latter's characteristics at the given time. In order to ensure the right to freedom of religion and belief in a context where religious beliefs and practices constantly diversify, the normative system applied to regulate religion needs to be flexible enough so as to meet the variety of claims nascent from the existing religious diversity. In other words, to ensure the

[920] Prohibited substances make this problematic explicit. *See*, for instance, the developments made *supra* on HRC, Views, 31/10/2007, *Prince v. South Africa*, communication n° 1474/2006.

highest degree of religious freedom in a context of continuous religious diversification, the methodologies at work in the elaboration and application of the right to freedom of religion and belief need to put the social context and the medium employed for its regulation in constant dialectics. Pluralism in general seems to be the outcome of a confrontation between basic principles—law, rights, pluralism, democracy, religious freedom…—and the social reality rather than a pure normative development of the one or the other. Religious pluralism, precisely, seems to stem from an encounter between social dynamics and claims for individual freedom rather than from a pure normative development of abstract legal principles. These dialectics confront the law with the social realities that it is aimed to regulate, it ensures that rights are suitably applied to the realities they face, and guarantees *in fine* the highest degree of religious freedom in society.

To take a metaphor, it can be said that religious pluralism is the core engine of a triangle that articulates religious freedom, religious diversity and the established social order.



Religious freedom represents the legal dimension of religious pluralism. It refers to the juridic-institutional arrangements made by the state with view to managing religious features, practices or claims expressed in society. Religious diversity, on the other hand, represents its sociological dimension, and refers to the actual religious features and practices taking place in society. Hence it is the sociological expression of individual religious freedom, which comprehends individual religious behaviors and the opportunity that the said individuals have

to proceed thereto beyond the legal framework. On the sociological dimension, the exercise of religious freedom is not limited to the laws in force. It also involves a contextual opportunity to adopt the religious practice or behavior, and the sociological aspect of its reception by society—its social acceptability. From there emerges the opportunity for individuals to proceed to religious behaviors and practices, which, covered by the guarantees of religious freedom, translates into actual behaviors. Therefore, in addition to stemming from a legally defined framework, the religious diversity also involves an axiological dimension. A more holistic dimension which refers to the acceptation, by members of society, of the practices and behaviors to which they come to be exposed. This latter dimensions, which stems from the perception of behaviors by society through such categories as 'acceptable', 'tolerable', 'good' and 'bad', etc., participates to building the legal framework by which religious diversity manifests when the individuals making such judgments happen to also be the agents who craft the legal framework that regulates religious freedom. For example when the said individuals happen to be members of the legislature in charge of elaborating it, or the judges in charge of applying its guarantees in particular cases.

In other words, religious pluralism articulates three distinct dimensions: a juridic-institutional dimension which delimits the contours of the exercise of religious freedom; a sociological dimension which provides the image of religious diversity as it exists at the time considered; and a psychological dimension which refers to the social acceptance of religious behaviors and practices. Projected at the social level, this psychological dimension materializes *in fine* an order established within society that frames the concrete exercise of religious freedom by individuals. Religious pluralism tends to engage these three dimensions into a dynamic process, and yields in a normative system which aims at including the existing religious diversity in view of a better integration of society as a whole.

When the normative system through which pluralism deploys happens to be of a legal nature, to analyze it leads to analyzing the right to religious freedom itself. More concretely, the said analysis consists in identifying how the right to freedom of religion and belief can be deployed with view to ensuring to highest degree of freedom to believe and act religiously, to the highest number of individuals, given the established social order in which they evolve. It

leads to identifying what practices are likely to integrate into society without generating further clashes and further violations, as well as settling the institutional dynamics of state institutions and public services.

From the perspective of international human rights law, an approach that would guarantee the highest degree of religious freedom given ,the three characteristic elements of religious pluralism and hence counter the down effects of the existing international approaches on the latter, consists of an approach that accompanies the dynamics of society as they manifest. In other words, an approach that grants the full protection of religious freedom to those religious practices that, being widespread in society, have crystallized as one of the latter's social dynamics. In fact, those religious practices and behaviors which crystallize a 'minority' in the meaning of F. Capotorti.

Such an approach would part from the state of society as it appears to be. More precisely, it would part from the characteristics of religious diversity as they appear to be within a given society. It would take into account the features of the established social order, and gradually accompany its changes and mutations. Ultimately, it would lead to a progressive adaptation of the existing law and institutional settings towards a better inclusion of the existing religious diversity. In osmosis with the requirements of the right to freedom of religion and belief, and human rights law as a whole, such an approach leads to a better application thereof . At the same time, it implies specific settings which revolve around the conception of the state and the work of the Judiciary.

II. Implications of the Research.

The first implication of this approach is the accent it puts on sociology as a discipline. It highlights the prominence of sociology as part and parcel of the hermeneutics of lawmaking and legal adjudication. In order to identify a minority, it is necessary to resort to sociology: the criteria laid by F. Capotorti, in his definition of the concept, are of a sociological nature,

and command the use of sociological methods to be identified[921]. The social tendencies, for representing the "inclination[s] of a social group"[922] [unofficial translation], are also elements of a sociological nature. The identification of the former and the latter requires the use of specific sociological methods, that only sociology, as a discipline, is able to develop.

Consequently, the minority approach developed *supra* suggests to integrate sociology, as a discipline, in the very processes by which pluralism is elaborated. On the legal dimension, it suggests to tackle the right to freedom of religion and belief with multidisciplinary hermeneutics, integrating sociological methodologies to the legal methodologies at work in the interpretation of the right. Accordingly, it advocates for the integration of sociologists, as professional personnel, within adjudicating bodies[923].

The fruitful collaboration of sociologists and lawyers—that is, of sociology and law—would adjust the interpretation of the right to religious freedom to the actual state of society and the dynamics taking place on the religious dimension. And the model of religious pluralism that would emerge from this collaboration would, accordingly, accompany the religious dynamics, evolutions and mutations of society, thus endowing each individual with the highest degree of religious freedom to be exerted therein.

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[921] In his Report, F. Capotorti's defines a minority as a "group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members—being nationals of the State—possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language". *See*, *supra*, Part III—Chapter 2—II—2—C. Social dynamics and social tendencies.

[922] SIRACUSA (J.), « Quelques usages du terme 'tendance' en sociologie », *Revue européenne des sciences sociales*, 55-2, 2017, p. 214. The original French wording of the quotation reads as follows: "Le penchant d'un groupe social", meaning, more precisely, "une intensité de l'attitude du groupe, attitude permanente, propre au groupe et ne s'actualisant que partiellement". *See*, *supra*, Part III—Chapter 2—II—2—C. Social dynamics and social tendencies.

[923] The same can be said about the political *fora* where public policies relating to pluralism are elaborated. On the political dimension, the approach highlights the importance of integrating sociological methodologies to those guiding public policy—both its elaboration and its implementation. Accordingly, it advocates for the integration of sociologists, as professional personnel, within the public commissions in charge of elaborating the law. For example, within parliamentary commissions discussing the law before its enactment. In fact, it advocates for the integration of sociologists even among the governing authorities in charge of elaborating public policy, such as, for example, ministries and secretaries of state. The fruitful collaboration of sociologists and (elected) political personnel is likely to adjust public policies to the actual state of society, in order for them to better accompany the dynamics taking place on the latter's religious dimension.

Circumscribed to the realm of litigations, courts and adjudication, this inclusion of sociologists within the Judiciary is an extension of the characteristic process to which religious freedom is subject—the judicialization. More precisely, as explained *supra*[924], 'judicialization' refers to a process by which an object comes gradually to integrate the domain of the Judiciary; a gradual shift from one power or authority of the state to the Judiciary. Seen from another perspective, judicialization also encompasses "the expansion of the province of the courts or the judges *at the expense of the politicians and/or the administrators*, that is, the transfer of decision-making rights from the legislature, the cabinet, or the civil service to the courts"[925]. In other words, it refers to the process of elaboration of the guarantees conveyed by the right to freedom of religion and belief: a process that takes place within the Judiciary, through case-law, on a case by case basis[926]. Integrating sociology and its methodologies into the global hermeneutics of adjudication in the litigations revolving around religious freedom is a further step in this process. It drives the Judiciary to integrate the field realities in decision-making, to be closer to society and its dynamics, and be more considerate of individual religiosity and individual religious aspirations.

Second, the approach entails a specific conception of the state itself. It entails that state authorities accompany the social dynamics that animate society, by regulating and managing their expression, instead of implementing measures that seek to foster the latter. In other words, it entails a liberal conception of the state as a whole, by which the latter leaves society to evolve freely and without any intervention other than that necessary to maintaining public order and the functioning of public institutions and services.

Eventually, the minority approach raises a key issue for state and Church relationship systems which recognize religious groups, minorities or communities. In these systems, indeed, religious groups and communities ought to fulfill specific requirements in order to be able to

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924 Part III—Chapter 2—I—2. The right to Freedom of Religion and Belief and the Judicialization of Religious Freedom.

925 MAYRL (D.), « The Judicialization of Religious Freedom: An Institutionalist Approach », *Journal for the Scientific Study of Religion*, 57(3), 2018, p. 517.

926 D. Mayrl further contends that courts appear to be "playing a major role in the management of religion". *See*, *ibid.*, p. 515. The reason for it seems to be that religious freedom is, in large part, "socially constructed". *See*, RICHARDSON (J. T.), « Managing Religion and the Judicialization of Religious Freedom », *Journal for the Scientific Study of Religion*, 54(1), 2015, p. 1.

interact with state authorities. Furthermore, after fulfilling these requirements, specified in domestic law, specific procedures entitle them to seek several kinds of benefit from the state. Once the recognition criteria fulfilled, the said religious groups and communities are able to enjoy benefits granted by state-law, and ranging from public funding to teaching in public or private schools[927]. In other words, when the said groups fulfill the criteria set by domestic laws, the latter commit the state to granting specific benefits to the recognized communities. In those cases, domestic law puts forth positive obligations for the state to execute in favor of religious groups and communities, when the latter fulfill the conditions for their official recognition.

Through recent judgements[928], the European Court of Human Rights has put forth several positive obligations incumbent on states parties to the European Convention on Human Rights, as stemming from its article 9. In the case of *Abdullah Yalçin v. Turkey (No. 2)*, for example, the applicant, who was incarcerated, was arguing a breach of article 9 due to the fact that the prison's personnel refused his demand for "congregational Friday prayers in a room on the premises of the prison"[929]. In its judgment, the Court explained that the case revolved around the positive obligations of the defending state[930]. Henceforth, given the "the domestic authorities did not seem to explore any other modalities"[931], they did not adduce "relevant and sufficient reasons in a manner that was compliant with their positive obligations under Article 9"[932]. In *Loste v. France*, the applicant, who was a foster child, was subject to proselytizing within her foster family. Such a proselytizing was in breach of the contract passed between the foster family and state authorities, by which they were allowed to act as foster parents for

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[927] In a 2014 report entitled *In 30 countries, heads of state must belong to a certain religion*, the Pew Research Centre highlighted that some countries around the world maintain specific religious requirements to be fulfilled even by their heads of state, thus granting advantages to specific religions. *See*, Pew Research Centre, *In 30 countries, heads of state must belong to a certain religion* (link), 22/07/2014 (last accessed: 06/10/2023).

[928] ECtHR, Fifth Section, Judgment, 12/01/2023, *Kilic v. Austria*, Application n° 27700/15; ECtHR, Fourth Section, Judgment, 11/10/2022, *Constantin-Lucian Spînu v. Roumanie*, Application n° 29443/20; ECtHR, Fifth Section, Judgment, 03/10/2022, *Loste v. France*, Application n° 59227/12; ECtHR, Second Section, Judgement, 14/06/2022, *Abdullah Yalçin v. Turkey (No. 2)*, Application n° 34417/10; ECtHR, Grand Chamber, Judgement, 10/12/2021, *Abdi Ibrahim v. Norway*, Application n° 15379/16; ECtHR, Fourth Section, Judgment, 20/07/2021, *Polat v. Austria*, Application n° 12886/16.

[929] ECtHR, *Abdullah Yalçin v. Turkey (No. 2)*, para. 8.

[930] *Ibid*., para. 30.

[931] *Ibid*., para. 34.

[932] *Ibid*., para. 35.

the applicant. For example, they refused that the applicant receive a blood transfusion, after an accident that she suffered. Pursuant to these facts, and the many investigations and meetings with the family—both prior and after they were made foster parents of the applicant—the Court considered that state authorities had to be cognizant of the situation[933]. For not being so, they breached their positive obligations pursuant article 9 ECHR[934].

The said obligations concerned specific and narrow aspects of article 9. Nevertheless, they appear as a novelty in the Court's global approach to article 9. Its past judgments did not lay any positive obligation in pursuance of that provision[935], as it was considered that article 9 imposes on states an obligation not to interfere with the latter or restrict its exercise by individuals. Until these recent judgements, article 9 listed a negative obligation—that of non-interference with individual religious freedom. With these recent developments, however, the Court seems to be adopting a new approach to article 9, putting forward obligations of a positive nature. It seems to be endowing article 9 ECHR with a new dimension, imposing on states a duty to act in favor of the right to freedom of thought, conscience and religion.

This slight—emerging—change of paradigm in the approach to the international human right to freedom of religion shows congruence with the minority approach. As it leads states to provide for religious groups representing a *de jure* minority or a *de facto* social tendency, the minority approach amounts, *in fine*, to questioning the extent of those positive obligations that might stem from the international human right to religious freedom. The issue sparks with more relevance regarding those states endowed with a recognition system, for the said systems establish, by law, a duty for the state to provide for the recognized religious groups and communities.

As a subject of regulation, religious freedom has proven to be a complex and essential right. Its constant complexification as a social reality seems to address human rights courts and treaty bodies with constantly more complex issues. Religious freedom is, indeed, at the

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933 ECtHR, *Loste v. France*, para. 115.

934 *Ibid*, para. 116.

935 The Court touched upon the issue, though not thoroughly, in ECtHR, Fifth Section, Judgment, 03/02/2011, *Siebenhaar v. Germany*, Application n° 18136/02.

confluents of many issues of multiple types; it is at the heart of many other social issues which go beyond the realm of law. Issues that foster, to a large extent, the social and institutional dynamics of states and societies. And that seems to be the reason of the multidimensional, multidisciplinary scholarship that it has been commanding through the ages of social sciences.

The present research focussed on the legal configuration of pluralism, as it stems from international human rights law. For being the most basic law to be applied by states, international human rights treaties have gradually acquired a "'constitutional' nature"[936]. Their place within the hierarchy of norms entails that any law—related to human and fundamental rights—must be in keeping with international human rights in order to be legally valid, and hence be legally binding. As a consequence, regulating religious freedom and religious pluralism requires to part from the legal framework set by the international human right to freedom of religion and belief.

III. Limitations of Research.

Along the analysis carried out, the research sparked with three major limitations. One concerns the use of the minority concept in the minority approach (1). which brings, in turn, issues of *logos* (2), and the final one concerns the mental focus of the research. Albeit mental, the latter may have an impact on the content of the research (3).

1. The Minority Concept.

As a concept, 'minority' covers quite different and multifaceted realities which need to be further interpreted[937]. In fact, this width, in terms of meaning, seems to have characterize the concept from the beginning of its use. That is why there was a need for an official definition, whose objective constitutive elements were the duty of F. Capotorti to deliver through his Report. But even among the characteristics provided by the Special Rapporteur as core

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[936] FITZMAURICE (M.), « Interpretation of Human Rights Treaties », *in* Shelton (D.) *et al*, *The Oxford Handbook of International Human Rights Law*, Oxford University Press, 2013, p. 742.

[937] UNECOSOC, Report, 1979, Study on the rights of persons belonging to ethnic, religious and linguistic minorities, E/CN.4/Sub.2/384/Rev.1, pp. 5-11, 31-45.

characteristics of a 'minority', some remain subject to interpretation, and thus bring the issue, so to speak, back to its starting point.

In his Report, F. Capotorti stated that a minority—within the meaning of article 27 ICCPR—is a "group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members—being nationals of the State—possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language"[938]. When applying the minority framework exposed *supra*, states would, thus, have to identify the religious or spiritual minorities evolving within their jurisdiction through four elements. They would have to identify, in a given group of people:

1) specific characteristics of a religious or spiritual nature that differ sharply from those of the rest of the population;

2) a specific will to preserve their religion or spirituality, meaning that the group shows, even implicitly, a sense of solidarity directed at preserving their religion or spirituality;

3) a numerical inferiority to the rest of the population;

4) a non-dominant position.

Of these four elements, two appear to be subject to an observational determination. More precisely, based on the patterns of contemporary religiosity, the religious or spiritual nature of a given element, characteristic or feature, can be determined from the attitude taken by the individual who embraces it. That is, a specific characteristic—a practice for example— will be 'religious' or 'spiritual' depending on the narrative applied to it by the individual who embraces it. Depending on whether it is viewed as such by the individual believer concerned,

[938] *Ibid*., p. 96.

it will be religious or spiritual for the external observer[939]. Likewise, the will of a group to preserve its religion or spirituality can also be deduced by observation, for example, as F. Capotorti explains, when the group at stake keeps a distinctive feature over time, or is involved in social activities revolving around it, animates cultural events based on the latter… In short, the will to preserve the religion or the spirituality can be derived from all activities carried by the group, that manifest a sense of belonging within their adepts.

By contrast, observation proves to be insufficient in determining the two latter elements composing a minority. In these cases, observation needs a further element of an intellectual nature, that serves as a guide for its deployment. In concrete terms, what would be, for example, the standard by which to appreciate a numerical inferiority? In more simple words, if a numerical inferiority to the rest of the population can be conceived easily, staring from which number a specific set of individuals can be considered as a group? That is, what is the *quorum a quo* that makes a proper 'group' in the meaning of a minority? What is the minimal *quorum* that operates the passage from deviance, deviant practices and individuals, to proper social groups and social tendencies—and eventually minorities? This issue appears to be still undetermined[940].

As no objective criteria appear to be set so far, the determination of this *quorum* creates a margin of interpretation in the very concept of minority, that the subjectivity of the organs in charge of interpreting it is called to determine. Thus, when it comes to the regulation of religious pluralism, the minority framework, as exposed *supra*, appears to limit considerably the area left for the interpretation of the right to religious freedom. However, it does not erase

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[939] For example, that is the difference between the turban worn by adepts of Sikhism and the one worn for fashionable reasons. The object, in itself, is identical in both cases. The narrative that brings it forth, as a social reality, differs. In the first narrative, it is the individual execution of a religious commandment; according to the second, it is a fashion outfit.

[940] In another Report meant at further clarifying the concept of minority, Special Rapporteur J. Deschênes stated that "there can be no mathematical answer to this question". *See*, UNECOSOC, Report, 14/05/1985, Proposal concerning a definition of the term 'minority', E/CN.4/Sub.2/1985/31, p. 12, para. 77. Thus, he stressed the need to adopt different heuristics than that of numbers when assessing the *quorum ad quo* of a minority. He resorts indeed to the amount of resources that the recognition of the group would require the state to engage. He states that "a minority should (…) not be so small as to tap a percentage of public resources entirely out of proportion with the benefit which society should derive from the expenditure" in order to be recognized as a minority. *See*, *ibid.*

this area, as the determination of a minority—as much as its social equivalent, the social tendency—supposes a numerical element that is not yet determined.

Likewise, how can the position of the said groups, within the power structures of society, be objectively determined? What objective criteria can settle the position of a group of individuals within the power structures of society? What standards can guide the analysis for that end? What is the basis for social 'dominance' in this area? And, *in fine*, what is the power structure at play between religious groups? In the area of religious pluralism, the 'power' issue seems to refer to an issue of auto-determination. That is, the power of a religious group may be its capacity to fulfill its religious aspirations[941], away from any social coercion, or any institutional constraint emanating from state structures. In the same vein, it comprises other elements such as the congruence with the socio-cultural settings of society[942], which anoints them with social legitimacy and a capacity to obtain privileges from state authorities. As there seems not to be any objective criterion that allows to assess the capacity for the said groups to fulfill their religious aspirations, there seems to be a lack of a criterion likely to determine the variation of this capacity from one group to another. Likewise, a criterion by which to assess the subjection to social coercion or institutional constraints also seems to be lacking.

This conceptual blur in the definition of 'minority', which is applicable, *mutatis mutandis*, to its social equivalent referred to as 'social tendency', still leaves an area for interpretation in the application of the minority framework. In spite of the rationalization that the minority framework operates in the processes governing religious pluralism, a grey area still remains, and allows for sovereign decisions to be made as to which groups amount to proper minorities or whether specific practices do or do not amount to proper social tendencies. The interpretation thereof determines the fate of religious groups, individuals and religions. Indeed, following its result, determined groups can come to enjoy official recognition and the advantages and privileges consented. Following its result, specific practices and behaviors can

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941 That is, the capacity of the members of the group, individual believers abstracted into a global entity called 'the group', to fulfill their religious aspirations in terms of development of their ideas and the practice thereof.

942 Therefore being at the centre of it, that is, their congruence with the centre of society as "composed of key values, beliefs, and institutions, as well as of the elites who maintain and propagate them". *See*, BECKFORD (J. A.), *ed.*, DEMERATH III (N. J.), *ed.*, *The SAGE Handbook of the Sociology of Religion*, London, SAGE Publications, 2007, p. 324.

be included as social tendencies in the state's global treatment of social diversity. From its result, other religious groups and other religious practices and behaviors can be maintained outside the scope of religious pluralism. Therefore, the semantic limit of this research still leaves an area of indetermination, and—paradoxically—joins one of central implications put forth above: the necessity to include sociologists within the fora where the decisions involving religious pluralism are made. Intellectual hurdles such as the definition of a minority refer to sociological realities, that sociology—and its empirical methods—seems to be the only discipline likely to solve.

The corresponding urge for multidisciplinary approaches in solving these issues drives a question on the language to adopt. By the same token, it questions the language adopted in this research, since it proceeds from a multidisciplinary focus and thus has to count with different types of languages. Each discipline has its own words, which lay proper concepts. So much so, by the consequent need to resort to different languages, multidisciplinary researches are subject to a specific issue—the scientific language to adopt.

2. Issues of *logos*.

As argued in the introduction[943], the language adopted for this research may seem to be imprecise at times. It may even appear as vague, unclear; the terminology used may even seem inadequate at times, thus casting a blur on the arguments or the point of view adopted. Hence an *exposé* that may foster doubts over which perspective they emanate from—law, sociology, or political sciences?

By the fact that each discipline has a language of its own, concepts of its own, and may endow similar words with different meanings, a multidisciplinary research is fatally confronted with this issues relating to the precision of the language adopted, its accuracy, and more generally its adequacy to the subject under investigation. In other words, as each discipline counts with a proper *logos*, each discipline endows words with a specific meaning. Each discipline uses words in more or less different senses, especially when the realities they

[943] *See*, Prolegomena—III—4. A Further Note on Methodology.

address tend to be complex, subtle and extremely nuanced. The specificity, the complexity and the degree of nuance that each discipline conveys through its own language may amount to interdisciplinary interferences that create an appearance of imprecision in multidisciplinary researches[944].

Indeed, the direct effect of this multiplicity of *logos* is that multidisciplinary researches become, in this sense, multi-linguistic. The multiplicity of technical languages sparks as a consubstantial characteristic of multi-disciplinary researches, which may, sporadically, cast blur on complex ideas and concepts.

Therefore, the language employed in this research was designed to fit the linguistic requirements of the three disciplines at the same time. In order to fit at best the linguistic standards of each *logos*, an emphasis was put on reformulating ideas repeatedly, using the terms of each discipline to the best extent. Also, the language employed was simplified to the best extent, so as to avoid impressions of imprecision and conceptual blur to the best extent.

However, this effort was not enough so as to cast away all blurry areas, so much so some ideas may still suffer from this linguistic limitation. Some topics needed to be discussed from their essence, which may be the realm of one discipline only. For example, the legal development of pluralism in international human rights law, as exposed in Part I, discusses religious pluralism essentially from a legal perspective. As a consequence, the language employed when discussing the social implications of the legal frameworks may appear as not fitting the linguistic standards of law while, at the same time, being 'too legal' from the perspective of a sociologist. Likewise, discussing the law was intentionally carried in the simplest language that could be conceived of, so as to include in the analysis an audience composed of the three disciplines engaged. However, there still remains specific technical notions in the analysis, such as the margin of appreciation, the distinction between general principles of law and values, which can prove to be unfamiliar concepts to non-lawyers. Likewise, in Part III, where a considerable resort was made to philosophy of law, the language adopted was willingly simplified to the best extent but may still be tainted with unfamiliarity

[944] *See*, *ibid*., and the concrete examples provided.

to non-(legal)philosophers. Hence sporadic impressions of uncertainty and imprecisions along the pages of the research. Eventually, to these perceived imprecision and uncertainties, another perception may be added which concerns the intellectual centre of gravity of the research.

In actual facts, these necessities to accommodate the variety of the audience and fit the requirements of all the disciplines composing multidisciplinary researches may be creating new standards of academic drafting. As the present research has abundantly exemplified in the preceding analysis, new standards of writing seem to be be materializing, born out of the necessity to meet the standards of all the disciplines involved—and their corresponding audience. Multidisciplinary research is becoming a field of its own; it seems, furthermore, to be a growing field of research. Accordingly, it might also be developing its proper language.

3. On Eurocentricism.

Within the research, the number of studies and examples referring to Europe may exceed those referring to other continents and cultural areas. Also, the number European and American scholars relied upon, and cited by the research, may seem to exceed the number of non-European scholars. Hence an appearance of Eurocentricism in the research.

In actual fact, the social tendencies described tend to be taking place all across the world. As it has been demonstrated in Part II, the reconfiguration of the religious experience, and the religious diversification of society to which the latter leads, are tendencies that appear to be taking place within all societies of the world, though in varying proportions. Therefore, the research takes its bases in various societies, and a multiplicity of studies revolving many

different societies of the word[945]. However, the sample of reflection may still be predominantly European for two reasons.

First, the empirical material of the research. Quantitatively, empirical studies and judgements on religious freedom issues tend to concentrate in European jurisdictions[946]. That is, the number of empirical studies, and judgements regarding religious freedom, available for the scientific study of religious pluralism tend to be higher in Europe than in any other continent or cultural area. As a global society, Europe might be the first subject, in quantitative terms, to the movement of religious diversification. Consequently, European countries and societies seem to give way to more empirical studies on religious diversity, they seem to lead to more cases and ligations over religious freedom than in other societies around the world. Within some of these societies, religion is less of a cleaving factor, less a subject of social unrest[947]. As a consequence, empirical studies and mitigations tend to be less numerous than in European countries, where religion has proven to be, along the centuries, quite a cleaving factor.

Second, the languages of the research. Although English is the predominant language of religious freedom scholarship, it remains that detailed studies, taking full account of the local context and socio-cultural dynamics, are also produced in domestic languages. Consequently, recourse to domestic studies and domestic authors, most in tune with the local socio-cultural dynamics making the background of the researches, remains difficult. Therefore, only those

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945 *See*, *inter alia*, ENG (L. A.), *ed.*, *Religious Diversity in Singapore*, Singapore, Institute of South East Asian Studies, 2008, 723 p.; RICHARDSON (J. T.), *ed.*, *Regulating Religion. Case Studies From Around the Globe*, New York, Kluwer Academic/Plenum Publishers, 2004, 578 p.; ROCHA (C.), *ed.*, BARKER (M.), *ed.*, *Buddhism in Australia. Traditions in change*, New York, Routledge, 2011, 170 p.; SARKISSIAN (A.), *The Varieties of Religious Repression. Why Governments Restrict Religion*, New York, Oxford University Press, 2015, 245 p.; STANISZ (P.), *Religion and Law in Poland*, The Netherlands, Wolters Kluwer, 2020, Second Edition, 192 p.; BEAMAN (L. G.), « Religious Diversity in the Public Sphere: The Canadian case », *Religions*, 8, 2017, pp. 259-278; BASTIAN (J. P.), « Pluralisation religieuse, pouvoir politique et société en Amérique Latine », *Pouvoirs*, Numéro 98 — 2001, pp. 135-146; BLANCARTE (R.), « Laïcité au Mexique et en Amérique Latine. Comparaisons », *Archives de sciences sociales des religions*, Numéro 146 — avril-juin 2009, pp. 17-40; DA COSTA (E.), « La laicidad uruguaya », *Archives de sciences sociales des religions*, Numéro 146 — avril-juin 2009, pp. 137-155; DA COSTA (N.), « Religion and public space in the Uruguayan *'laïcité'* », *Social Compass*, Vol. 65(4), 2018, pp. 503-515; YANG (F.), *ed.*, TAMNEY (J. B.), *ed.*, *State, Market, and Religions in Chinese Societies*, Leiden, Brill, 2005, 258 p.; YANG (F.), *Religion in China. Survival and Revival Under Communist Rule*, New York, Oxford University Press, 2012, 245 p.; etc.

946 *See*, for that matter, the number of judgements issued by the ECtHR on article 9 ECHR and the number of judgements issued by the IACHR on article 12 ACHR.

947 *See*, *supra*, Part II—Book I—Chapter 2—I. Religion before the IACHR.

researches drafted and made accessible in European languages such as English, French, and Spanish, were accessible for the present research to be carried out.

Lastly, the precision must be made that, despite these difficulties, the research sought to include widely diverse societies in its centre. Such countries as China, Singapore, Uruguay, Canada, France, Poland, Spain, Australia, Brazil and others all converged in the intellectual centre of the research, as it appears from the footnotes and bibliography stating the intellectual material the research relies upon. One can even say, in fact, that the latter is the present research is a scientific treatment of a synthesis of the issues of religious diversity that all these distinct societies go through.

Bibliography

BOOKS.

Manuals.

HENNEBEL (L.), TIGROUDJA (H.), *The American Convention on Human Rights. A Commentary*, New York, Oxford University Press, 2022, 1541 p.

SCHABAS (W. A.), *The European Convention on Human Rights. A Commentary*, Oxford (England), New York (New York), Oxford University Press, First Edition, 2015, 1433 p.

SUDRE (F.), *Droit européen et international des droits de l'homme*, PUF, 13ème éd. refondue, Octobre 2016, 1005 p.

Books.

ADAMSKI (A. F.), *The Church in Poland in the Mirror of the Press*, Ruzomberok, Verbum, 2012, 123 p.

AL-AZMEH (A.), *ed.*, FOKAS (E.), *ed*, *Islam in Europe. Diversity, Identity, and Influence*, Cambridge, Cambridge University Press, 2007, 223 p.

AMARASINGAM (A.), *ed.*, *Religion and the New Atheism. A Critical Appraisal*, Leiden, Brill, 2010, 253 p.

AMMERMAN (N. T.), *ed.*, *Everyday Religion. Observing Modern Religious Lives*, New York, Oxford University Press, 2007, 243 p.

ASAD (T.), *Genealogies of Religion. Discipline and Reasons of Power in Christianity and Islam*, Baltimore, John Hopkins University Press, 1993, 335 p.

ÅRSHEIM (H.), *Making Religion and Human Rights at the United Nations*, Berlin/Boston, Walter de Gruyter GmbH, 2018, 316 p.

BARBALET (J.), POSSAMAI (A.), TURNER (B. S.), *Religion and the State. A Comparative Sociology*, London, Anthem Press, 2011, 282 p.

BARKER (E.), *ed.*, *The Centrality of Religion in Social Life. Essays in Honor of James A. Beckford*, United Kingdom, Ashgate, 2008, 247 p.

BARKER (E.), *ed.*, BECKFORD (J. A.), *ed.*, DOBBELAERE (K.), *ed.*, *Secularization, Rationalism, and Sectarianism. Essays in Honour of Bryan R. Wilson*, Oxford, New York, Clarendon Press, 1993, 322 p.

BAUBEROT (J.), *dir.*, MILLOT (M.), *dir.*, PORTIER (P.), *dir*., *Laïcité, laïcités : Reconfigurations et nouveaux défis*, Paris, Editions de la Maison des Sciences de l'Homme, 2015, 397 p.

BAUBEROT (J.), *ed.*, *Religions et Laïcités dans l'Europe des Douze*, Paris, Syros, 1994, 302 p.

BEAMAN (L. G.), *ed.*, TOMLINS (S.), *ed.*, *Atheist Identities — Spaces and Social Contexts*, Switzerland, Springer International Publishing, 2015, 219 p.

BECKER (H. S.), *Outsiders. Studies in the Sociology of Deviance*, New York, The Free Press, 1963, 179 p.

BECKFORD (J. A.), *Cult Controversies. The Societal Response to the New Religious Movements*, London, Tavistock Publications, 1985, 327 p.

BECKFORD (J. A.), *ed.*, DEMERATH III (N. J.), *ed.*, *The SAGE Handbook of the Sociology of Religion*, London, SAGE Publications, 2007, 746 p.

BECKFORD (J. A.), *ed.*, *New Religious Movements and Rapid Social Change*, London, Paris, Sage Publications Ltd., 1986, 247 p.

BECKFORD (J. A.), *ed.*, LUCKMANN (T.), *ed.*, *The Changing Face of Religion*, London, Sage Publications Ltd., 1989, 178 p.

BECKFORD (J. A.), *ed.*, WALLISS (J.), *ed.*, *Theorizing Religion. Classical and Contemporary Debates*, England, Ashgate, 2006, 257 p.

BECKFORD (J. A.), *Religion and Advanced Industrial Society*, London, Unwin Hyman., 1989, 189 p.

BECKFORD (J. A.), *The Trumpet of Prophecy. A Sociological Study of Jehovah's Witness*, Oxford, Basil Blackwell., 1975, 244 p.

BEN ACHOUR (Y.), *La Cour européenne des droits de l'Homme et la liberté de religion*, Paris, Pedone, 2005, 96 p.

BERGER (P. L.), *A Far Glory. The Quest for Faith in an Age of Credulity*, New York, The Free Press, 1992, 218 p.

BERGER (P. L.), *ed.*, *Between Relativism and Fundamentalism. Religious resources for a middle position*, Cambridge, William B. Eerdmans Publishing Company, 2010, 209 p.

BERGER (P. L.), *ed.*, HUNTINGTON (S. P.), *ed.*, *Many Globalizations. Cultural Diversity in the Contemporary World*, New York, Oxford University Press, 2002, 374 p.

BERGER (P. L.), *ed.*, *The Desecularization of the World. Resurgent Religion and World Politics*, Washington, D.C., Ethics and Public Policy Center, 1999, 135 p.

BERGER (P. L.), *ed.*, *The Limits of Social Cohesion. Conflicts and Mediation in Pluralist Societies*, Boulder (Colorado), Perseus, 1998, 396 p.

BERGER (P. L.), *Facing Up to Modernity. Excursions in Society, Politics, and Religion*, New York, Penguin Books, 1977, 283 p.

BERGER (P. L.), *The Heretical Imperative. Contemporary Possibilities of Religious Affirmation*, London, Collins, 1980, 220 p.

BERGER (P. L.), *The Sacred Canopy. Elements of a Sociological theory of Religion*, New York, Anchor Books Editions, 1990, 229 p.

BRAUDEL (F.), *L'identité de la France. Les hommes et les choses*, Paris, Arthaud — Flammarion, 1986, 222 p.

BRÉCHON (P.), GONTHIER (F.), *European Values. Trends and Divides Over Thirty Years*, Leiden, Brill, 2017, 292 p.

BRÉCHON (P.), *ed.*, WILLAIME (J.-P.), *ed.*, *Médias et religions en miroir*, Paris, Presses Universitaires de France, 2000, 334 p.

BOASE (R.), *ed*., *Islam and Global Dialogue. Religious Pluralism and the Pursuit of Peace*, Hands (England), Burlington (USA), Ashgate Publishing Company, 2005, 310 p.

BUCHANAN (T.), *Europe's Troubled Peace. 1945 to the Present*, Second Edition, Chichester (United Kingdom), Wiley-Blackwell, 2012, 318 p.

CAIUBY LABATE (B.), *ed.*, CAVNAR (C.), *ed.*, *Prohibition, Religious Freedom, and Human Rights. Regulating Traditional Drug Use*, Heidelberg, Springer, 2014, 254 p.

CALDERON GAMBOA (J. F.), *Reparación del Daño al Proyecto de Vida por Violaciones a Derechos Humanos*, Mexico, Editorial Porrúa, 2005, 100 p.

CARNES (T.), *ed.*, YANG (F.), *ed.*, *Asian American Religions. The Making and Remaking of Borders and Boundaries*, New York, New York University Press, 2004, 399 p.

CASANOVA (J.), *ed.*, *Public Religions in the Modern World*, Chicago, University of Chicago Press, 1994, 320 p.

CASANOVA (J.), *Global Religious and Secular Dynamics. The Modern System of Classification*, Leiden, Brill, 2019, 74 p.

CONNORS (M. H.), HALLIGAN (P. W.), « Revealing the Cognitive Neuroscience of Belief », *Frontiers in Behavioral Sciences*, Volume 16, 2022, 4 p.

CONTOGEOGIS (G.), *L'Europe et le Monde. Civilisation et pluralism culturel*, Paris, L'Harmattan, 2011, 134 p.

CUCHE (D.), *La Notion de Culture dans les Sciences Sociales*, Paris, La Découverte, 2010, 157 p.

CURTIT (F.), *dir.*, MESSNER (F.), *dir.*, *Droit des religions en France et en Europe : Recueil de textes*, Bruxelles, Bruylant, 2008, 1193 p.

DEL NOCE (A.), *L'Epoque de la Sécularisation*, Paris, Editions des Syrtes, 2001, 254 p.

DEWEY (J.), *Logic. The Theory of Inquiry*, New York, Henry Holt and Company, 1938, 546 p.

DONNELLY (J.), *ed*, WHELAN (D.), *ed*, *International Human Rights*, 5th ed., Boulder, CO: Westview Press, 2017, 288 p.

DUBOUT (E.), *dir.*, TOUZE (S.), *dir.*, *Les droits fondamentaux : Charnières entre Ordres et Systèmes juridiques*, Paris, Pedone, 2010, 336 p.

DURKHEIM (E.), *Les Formes Elémentaires de la Vie Religieuse. Le Système Totémique en Australie*, Paris, LGF — Livre de Poche, 1991, 758 p.

EDWARDS (R.), *ed*., *Formal Axiology and Its Critics*, Leiden, Brill, 2021, 227 p.

ESCOFFERY (D. S.), *ed.*, *How Real is Reality TV? Essays on Representation and Truth*, Jefferson, North Carolina, McFarland & Company, Inc., Publishers, 2006, 281 p.

ENG (L. A.), *ed.*, *Religious Diversity in Singapore*, Singapore, Institute of South East Asian Studies, 2008, 723 p.

FABERON (F.), *dir.*, *Liberté religieuse et cohésion sociale : la diversité française*, Aix-Marseille Université, Presses Universitaires d'Aix-Marseille, 2ème trimestre 2015, 626 p.

FASSBENDER (B.), TRAISBACH (K.), *The Limits of Human Rights*, Oxford, Oxford University Press, 2019, 388 p.

FEUCHTWANG (S.), *Popular Religion in China. The Imperial Metaphor*, London, Routledge Curzon, 2003, 283 p.

FOGLIADINI (E.), *ed.*, *Religioni, Libertà, Potere*, Milano, Vita e Pensiero, 2014, 231 p.

FORSYTHE (D.), *Human Rights in International Relations*, 4th ed., Cambridge, Cambridge University Press, 2017, 432 p.

FRISBY (D.), *ed.*, FEATHERSTONE (M.), *ed.*, *Simmel on Culture*, London, SAGE Publications, 2000, 302 p.

FOUCAULT (M.), *Naissance de la Biopolitique. Cours au Collège de France, 1978-1979*, Lonrai, Seuil/Gallimard, 2004, 355 p.

FUKUYAMA (F.), *State Building. Governance and World Order in the 21st Century*, New York, Cornell University Press, 2004, 137 p.

FUKUYAMA (F.), *The Great Disruption. Human Nature and the Reconstitution of Social Order*, New York, The Free Press, 1999, 354 p.

FUKUYAMA (F.), *The Origins of Political Order. From Prehuman Times to the French Revolution*, New York, Farrar, Straus and Giroux, 2011, 585 p.

GALLAND (O.), LEMEL (Y.), *Valeurs et cultures en Europe*, Pairs, La Découverte, 2007, 120 p.

GENY (F.), *Méthode d'Interprétation et Sources en Droit Privé Positif. Essai Critique*, Seconde Edition Revue et Mise au Courant, Paris, LGDJ, vol. 1, 1996, 446 p.

GENY (F.), *Méthode d'Interprétation et Sources en Droit Privé Positif. Essai Critique*, Seconde Edition Revue et Mise au Courant, Paris, LGDJ, vol. 2, 1996, 422 p.

GENY (F.), *Science et Technique en Droit Privé Positif*, Paris, Sirey, vol. 1, 1913, 212 p.

GENY (F.), *Science et Technique en Droit Privé Positif*, Paris, Sirey, vol. 2, 1913, 422 p.

GENY (F.), *Science et Technique en Droit Privé Positif*, Paris, Sirey, vol. 3, 1913, 522 p.

GENY (F.), *Science et Technique en Droit Privé Positif*, Paris, Sirey, vol. 4, 1913, 265 p.

GIORDAN (G.), *ed.*, BERTOLO (C.), *ed.*, *Spiritualità Incorporate. La pratiche dello Yoga*, Milano, Memesis Edizioni, 2016, 98 p.

GIORDAN (G.), *ed.*, *Conversion in the Age of Pluralism*, Leiden, Brill, 2009, 333 p.

GIORDAN (G.), *ed.*, PACE (E.), *ed.*, *Mapping Religion and Spirituality in a Postsecular World*, Switzerland, Springer International Publishing, 2014, 188 p.

GIORDAN (G.), *ed.*, PACE (E.), *ed.*, *Religious Pluralism. Framing Religious Diversity in the Contemporary World*, Leiden, Brill, 2012, 203 p.

GIORDAN (G.), *ed.*, ZRINSČAK (S.), *ed.*, *Global Eastern Orthodoxy*, Switzerland, Springer, 2020, 264 p.

GIORDAN (G.), *ed.*, *Vocation and Social Context*, Leiden, Brill, 2007, 213 p.

GIORDAN (G.), *ed.*, SWATOS (W. H.), *ed.*, *Religion, Spirituality and Everyday Practice*, Springer Netherlands, 2011, 193 p.

GIORDAN (G.), *ed.*, *Tra religione e spiritualità. Il rapporto con il sacro nell'epoca del pluralismo*, FrancoAngeli, Milano, 2006, 285 p.

GIORDAN (G.), *Identity and Pluralism. The Values of Postmodernism*, New York, Fist Edition, 2004, 140 p.

GIORDAN (G.), *Valori e Cambiamento Sociale*, Roma, Agrilavoro Edizioni — Cristiani nel Mondo 7, 2001, 148 p.

GIRARD (C.), *Des droits fondamentaux au fondement du droit: Réflexions sur les discours théoriques relatifs au fondement du droit*, Paris, Éditions de la Sorbonne, 2010, 410 p.

GISEL (P.), *L'Excès du Croire. Expérience du Monde et Accès à Soi*, Paris, Desclée De Brouwer, 1990, 193 p.

GOODHART (M.), *ed.*, *Human Rights: Politics and Practice*, 3rd ed., Oxford: Oxford University Press, 2016, 512 p.

GOZDECKA (D. A.), *Rights, Religious Pluralism and the Recognition of Difference*, New York, Routledge, 2016, 185 p.

GRIM (B. J.), *ed.*, FINKE (R.), *ed.*, *The Price of Freedom Denied. Religious Persecution and Conflict in the Twenty First Century*, New York, Cambridge University Press, 2011, 257 p.

GRZYWACZEWSKI (J.), *La Religion Catholique en Pologne dans le contexte des autres pays d'Europe*, Lublin, Religie Swiata, 2012, 145 p.

GUZEK (D.), *Mediatizing the Secular State. Media, Religion and Politics in Contemporary Poland*, Berlin, Peter Lang, Berlin, 2019, 340 p.

HAECK (Y.), *ed.*, RUIZ CHIRIBOGA (O.), *ed.*, BURBANO HERRERA (C.), *ed.*, *The Inter-American Court of Human Rights: Theory and Practice, Present and Future*, Cambridge, Intersentia, 2015, 832 p.

HERVIEU-LÉGER (D.), *La Religion pour Mémoire*, Paris, Les Editions du CERF, 1993, 273 p.

HILL (M.), SANDBERG (R.), DOE (N.), *Religion and Law in the United Kingdom*, Alphen aan den Rijn, Kluwer Law International, 2014, 248 p.

HJARVARD (S.), *ed.*, LÖVHEIM (M.), *ed.*, *Meditation and Religion. Nordic Perspectives*, Göteborg, Nordicom, 2012, 210 p.

HUNTINGTON (S.), *ed.*, *The Strategic Imperative. New Policies for American Security*, Cambridge, Massachusetts, Ballinger Publishing Company, 1982, 360 p.

HUNTINGTON (S.), *The Clash of Civilizations and the Remaking of World Order*, New York, Simon & Schuster, 1996, 367 p.

HUNTINGTON (S.), *Who Are We? The Challenges to America's National Identity*, New York, Simon & Schuster, 2004, 428 p.

INGLEHART (R.), *ed*., NORRIS (P.), *ed*., *Rising Tide. Gender Equality and Cultural Change Around the World*, New York, Cambridge University Press, 2004, 226 p.

JAMES (W.), *Pragmatism. A new name for some old ways of thinking*, New York [etc.], Longmans, Green, and co., 1907, 337 p.

JAMES (W.), *The Varieties of Religious Experience*, Cambridge, Massachusetts, Harvard University Press, 1985, 669 p.

JAMES (W.), *The Will to Believe*, Cambridge, Massachusetts, Harvard University Press, 1979, 490 p.

JELEN (T. G.), *The Political Mobilization of Religious Beliefs*, New York, Praeger Publishers, 1991, 189 p.

JELEN (T. G.), *ed.*, *Sacred Markets, Sacred Canopies. Essays On Religious Markets and Religious Pluralism*, Oxford, Rowman & Littlefield Publishers, 2002, 215 p.

JOSEPHSON (J. A.), *The Invention of Religion in Japan*, Chicago, The University of Chicago Press, 2012, 387 p.

KASSELSTRAND (I.), ZUCKERMAN (P.), CRAGUN (R. T.), *Beyond Doubt. The Secularization of Society*, New York, New York University Press, 2023, 227 p.

KNOTT (K.), POOLE (E.), TAIRA (T.), *Media Portrayals of Religion and the Secular Sacred*, Burlington, Ashgate, 227 p.

KYMLICKA (W.), *Contemporary Political Philosophy. An Introduction*, New York, Oxford University Press, 1990, 321 p.

KYMLICKA (W.), *Multicultural Citizenship*, New York, Oxford University Press, 1996, 296 p.

LEUSTAN (L. N.), *ed.*, MADELEY (J. T. S.), *ed.*, *Religion, Politics and Law in the European Union*, New York, Routledge, 2010, 223 p.

LEVEAU (R.), *dir.*, MOHSEN-FINAN (K.), *dir.*, *Musulmans de France et d'Europe*, Paris, CNRS Editions, 2005, 197 p.

LEVI-STRAUSS (C.), *Introduction to the Work of Marcel Mauss*, London, Routledge & Kegan Paul, 1987, 89 p.

MARKOVITS (J.), *Moral Reason*, Oxford, Oxford University Press, 2014, 208 p.

MENUGE (A. F. L.), *ed.*, *Legitimizing Human Rights. Secular and Religious Perspectives*, New York, Routledge, 1st Edition, 2016, 232 p.

MEYER (M.), *ed.*, *De La Métaphysique A La Rhétorique*, Belgique, Editions de l'Université de Bruxelles, 1986, 208 p.

MONTESQUIEU, *The Spirit of Laws*, Kitchener Ontario (Canada), Batoche Books, 2001, 726 p.

OLÉRON (P.), *L'argumentation*, Paris, Presses Universitaires de France, 1983, 127 p.

ONFRAY (M.), *Décadence*. *Vie et mort du judéo-christianisme*, Mayenne, Flammarion, 2017, 652 p.

OTTO (R.), *Le Sacré. L'Elément Non-Rationnel dans l'Idée du Divin et sa Relation avec le Rationnel*, Paris, Payot, 1949, 238 p.

PASCUAL-VIVES (F.), *Consensus-Based Interpretation of Regional Human Rights Treaties*, Leiden, Brill | Nijhoff, 2019, 290 p.

PERELMAN (C.), *L'Empire Réthorique*, Paris, Librairie Philosophique J. Vrin, 1977, 196 p.

PERELMAN (C.) *et al.*, *La Théorie de l'Argumentation. Perspectives et Application*, Louvain, Editions Nauwelaerts, 1963, 617 p.

POSSAMAI (A.), *ed.*, *Handbook of Hyper-real Religions*, Leiden, Brill | Nijhoff, 2012, 441 p.

POSSAMAI (A.), *ed.*, RICHARDSON (J. T.), *ed.*, TURNER (B. S.), *ed.*, *The Sociology of Shari'a: Case Studies from around the World*, Switzerland, Springer International Publishing, 2015, 328 p.

POSSAMAI (A.), *Sociology of Religion for Generations X and Y*, London, Equinox, 2009, 225 p.

RAMET (S. P.), *ed*., BOROWIK (I.), *ed*., *Religion, Politics, and Values in Poland. Continuity and Change Since 1989*, New York, Palgrave Macmillan, 2017, 341 p.

RAWLS (J.), *A Theory of Justice*, 2nd Revised Edition, Cambridge (Massachusetts), Harvard University Press, 1999, 560 p.

REMOND (R.), *Religion et Société en Europe. La sécularisation aux XIXe et XXe siècles 1780-2000*, Paris, Editions du Seuil, 2001, 311 p.

RICHARDSON (J. T.), *ed.*, BELLANGER (F.), *ed.*, *Legal Cases, New Religious Movements, and Minority Faiths*, Farnham (United Kingdom), Ashgate, 2014, 278 p.

RICHARDSON (J. T.), *ed.*, BEST (J.), *ed.*, BROMLEY (D. G.), *ed.*, *The Satanism Scare*, New York, Adeline De Gruyter, 1991, 320 p.

RICHARDSON (J. T.), *ed.*, *Regulating Religion. Case Studies From Around the Globe*, New York, Kluwer Academic/Plenum Publishers, 2004, 578 p.

RIIS (O.), WOODHEAD (L.), *A Sociology of Religious Emotions*, Oxford, Oxford University Press, 2010, 286 p.

ROCHA (C.), *ed.*, BARKER (M.), *ed.*, *Buddhism in Australia. Traditions in change*, New York, Routledge, 2011, 170 p.

SAID (E. W.), *L'Orientalisme*, Points, Edition du Seuil, 2005, 581 p.

SAMSON (C.), *The Colonialism of Human Rights*, Cambridge, Polity Press, 2020, 256 p.

SANDBERG (R.), *Religion, Law and Society*, Cambridge, Cambridge University Press (Cambridge Studies in Law and Society), 2014, 277 p.

SARKISSIAN (A.), *The Varieties of Religious Repression. Why Governments Restrict Religion*, New York, Oxford University Press, 2015, 245 p.

SKINNER (Q.), *Liberty Before Liberalism*, Cambridge, Cambridge University Press, 1999, 142 p.

STANISZ (P.), *Religion and Law in Poland*, The Netherlands, Wolters Kluwer, 2020, Second Edition, 192 p.

SWANSON GOLDBERG (E.), *ed.*, SCHULTHEIS MOORE (A.), *ed.*, *Theoretical Perspectives on human Rights and Literature*, New York, Routledge, 2012, 302 p.

SWEETMAN (B.), *Religion. Key Concepts in Philosophy*, New York, Continuum, 2007, 172 p.

SZAJKOWSKI (B.), *Next to God… Poland. Politics and Religion in Contemporary Poland*, London, Frances Pinter (Publishers), 1983, 264 p.

TAROT (C.), *Le symbolique et le sacré. Théories de la religion*, Paris, Editions La Découverte, 2008, 911 p.

TAYLOR (P. M.), *Freedom of Religion. UN and European Human Rights Law and Practice*, Cambridge, Cambridge University Press, 2005, 405 p.

TEMPERMAN (J.), *ed.*, GUNN (J. T.), *ed.*, EVANS (M.), *ed.*, The *European Court of Human Rights and the Freedom of Religion and Belief. The 25 Years Since Kokkinakis*, Leiden, Brill | Nijhoff, 2019, 602 p.

TEMPERMAN (J.), *ed.*, *State-Religion Relationships and Human Rights Law. Towards a Right to Religiously Neutral Governance*, Leiden, Martinus Nijhoff Publishers, 2010, 382 p.

THIMM (V.), *ed*., *(Re-)Claiming Bodies Through Fashion and Style. Gendered Configurations in Muslim Contexts*, Palgrave MacMillan, Cham (Switzerland), 2021, 317 p.

THORNBERRY (P.), *International Law and the Rights of Minorities*, Clarendon Press Oxford, Oxford University Press, 1993, 464 p.

THOUARD (D.), *Liberté et Religion. Relire Benjamin Constant*, Paris, CNRS Editions, 2020, 204 p.

TOYNBEE (A. J.), *Hellenism. The History of a Civilization*, London, Oxford University Press, 1960, 255 p.

VAL JULIAN (C.), *dir.*, *La conquête de l'Amérique espagnole et la question du droit*, Lyon, ENS Lyon, 1996, 154 p.

Van DETH (J. W.), *ed.*, SCARBROUGH (E.), *ed.*, *The Impact of Values*, New York, Oxford University Press, 1995, 588 p.

VILAÇA (H), *ed.*, PACE (E.), *ed.*, INGER (F.), *ed.*, PETTERSSON (P.), *ed.*, *The Changing Soul of Europe. Religions and Migrations in Northern and Southern Europe*, Farnham, Ashgate Publishing Limited, 2014, 265 p.

WEBER (M.), *L'éthique protestante et l'esprit du capitalisme*, Paris, Plon, 1964, 323 p.

WEIL (P.), « Vers une Normativité Relative en Droit International ? », *Revue Générale de Droit International Public*, Tome LXXXVI, 1982, pp. 6-47.

WITTE (J.), *ed.*, GREEN (C.), *ed.*, *Religion and Human Rights. An Introduction*, New York, Oxford University Press, 2011, 392 p.

WRIGHT (S. A.), *ed.*, RICHARDSON (J. T.), *ed.*, *Saints under Siege. The Texas State Raid on the Fundamentalist Latter Day Saints*, New York, New York University Press, 2011, 270 p.

YANG (F.), *ed.*, TAMNEY (J. B.), *ed.*, *State, Market, and Religions in Chinese Societies*, Leiden, Brill, 2005, 258 p.

YANG (F.), *ed.*, TONG (J. K. C.), *ed.*, ANDERSON (A. H.), *ed.*, *Global Chinese Pentecostal and Charismatic Christianity*, Leiden, Brill, 2017, 373 p.

YANG (F.), *Religion in China. Survival and Revival Under Communist Rule*, New York, Oxford University Press, 2012, 245 p.

These.

BLANC-FILY (C.), *Les valeurs dans la jurisprudence de la Cour européenne des droits de l'Homme : Essai critique sur l'interprétation axiologique du juge européen*, Bruxelles, Bruylant, 1ère éd., 05/2016, 756 p.

CHAIBI (M.), *L'Islam dans la jurisprudence de la Cour Européenne des droits de l'Homme*, Mémoire de fin d'étude, soutenu à l'Université Lille II en septembre 2017, sous la direction de Madame la Professeure E. BERNARD.

ARTICLES.

ABU-RAYYA (M. H.), WALKER (R.), WHITE (F. A.), ABU-RAYYA (H. M.), « Cultural Identification and Religious Identification Contribute Differentially to the Adaptation of Australian Adolescent Muslims », *International Journal of Intercultural Relations*, 54, 2016, pp. 21-33.

ABDULLA (M. R.), « Culture, Religion, and Freedom of Religion or Belief », *The Review of Faith & International Affairs*, 16:4, 2018, pp. 102-115.

ÁDÁM (Z.), BOZÓKI (A.), « State and Faith: Right-wing Populism and Nationalized Religion in Hungary », *Intersections. EEJSP*, 2(1), 2016, pp. 98-122.

ADAME (M. E. C.), « La religión como une dimensión de la cultura », *Nómadas. Revista Crítica de Ciencias Sociales y Jurídicas*, 22, 2009.2, pp. 1-15.

ADHAR (R.), « Is Secularism Neutral? », *Ratio Juris*, Vol. 26, No. 3, September 2013, pp. 404–29.

ADLER (M. D.), « Expressive Theories of Law: a Skeptical Overview », *University of Pennsylvania Law Review*, vol. 148, 2000, pp.

ADRIAN (M.), « The principled slope: religious freedom and the European Court of Human Rights », *Religion, State and Society*, 45:3-4, 2017, pp. 174-185.

AGADJANIAN (A.), « From urban landscape to national culture: Russia's conspicuous religious simulacra and enduring, if fragile, secularity », *Social Compass*, Vol. 68(3), 2021, pp. 392-409.

AHLIN (L.), BORUP (J.), QVORTRUP FIBIGER (M.), KÜHLE (L.), MORTENSEN (V.), DYBDAL PEDERSEN (R.), « Religious Diversity and Pluralism: Empirical Data and Theoretical Reflections from the Danish Pluralism Project », *Journal of Contemporary Religion*, 27:3, 2012, pp. 403-418.

AKGÖNÜL (S.), « La laïcité à la turque à l'épreuve d'un régime laïque », *Revue du droit des religions*, vol. 14, 2022, pp. 87-105.

AKTAY (Y.), « European values and the Muslim world: Turkish cases at the European Court of Human Rights », *Global Change Peace & Security*, 20:1, 2008, pp. 99-108.

ALIDADI (K.), FOBLETS (M.-C.), « Framing Multicultural Challenges in Freedom of Religion Terms. Limitations of Minimal Human Rights for Managing Religious Diversity in Europe », *Netherlands Quarterly of Human Rights*, Vol. 30/4, 2012, pp. 460–488.

ALTER (K.), HELFER (L.), MADSEN (M. R.), « How Context Shapes the Authority of International Courts », *Law and Contemporary Problems*, Vol. 79:1, n° 1, 2016, pp. 1-36.

AMARASINGAM (A.), UMAR (S.), DESAI (S.), « 'Fight, Die, and If Required Kill': Hindu Nationalism, Misinformation, and Islamophobia in India », *Religions*, 13(5), 2022, 380.

AMATAYAKUL (S.), « Surmonter ses Emotions, Conquérir son Destin. Réflexions sur l'éthique de Descartes », *Diogène*, Numéro 237 — 2012/1, pp. 109-120.

AMIRAUX (V.), « L'Europe face à l'Islam », *Revue Projet*, n° 342, Octobre 2014, pp. 53-59.

AMMERMAN (N. T.), « Finding Religion in Everyday Life », *Sociology of Religion*, 75:2, 2014, pp. 189-207.

AMMERMAN (N. T.), « Lived Religion as an Emerging Field: an Assessment of its Contours and Frontiers », *Nordic Journal of Religion and Society*, Volume 29, no 2, 2016, pp. 83-99.

AMMERMAN (N. T.), « The Challenges of Pluralism: Locating Religion in a World of Diversity », *Social Compass*, 57(2), 2010, pp. 154-167.

ANCZYK (A.), GRZYMALA-MOSZCZYŃSKA (J.), « Religious discrimination discourse in the mono-cultural school: the case of Poland », *British Journal of religious education*, Vol. 40, no. 2, 2018, pp. 182-193.

ANDERSON (J.), « Social, Political, and Institutional Constraints on Religious Pluralism in Central Asia », Journal of Contemporary Religion, 17:2, 2002, pp. 181-196.

ANDRE (M.), « Personne, Société, Communauté », *Revue Philosophique de Louvain*, Volume 52, n°35, 1954, pp. 447-461.

ANG (I.), ALBERT (N. G.), « Dépasser l'Unité dans la Diversité : pour des Identités Cosmopolites », *Diogène*, Numéro 237 — 2012/1, pp. 12-27.

ANDERSON (E. S.), PILDES (R. H.), « Expressive Theories of Law: A General Restatement », *University of Pennsylvania Law Review*, Vol. 148, No. 5, May, 2000, pp. 1503-1575.

ARGOUNÈS (F.), « L'Australie : la tentation de la puissance régionale », *Pouvoirs*, n° 141, 2012, pp. 103-116.

ARLETTAZ (F.), « La libertad religiosa en el Sistema Interamericano de Derechos Humanos », *Revista Internacional de Derechos Humanos*, Numéro 1 — 2011, pp. 39-58.

AUBERT (N.), « Un individu Paradoxal », *in* AUBERT (N.), *ed.*, *L'individu Hypermoderne*, *Eres*, 2006, pp. 11-24.

AVRIL (P.), « Qui fait la Loi », *Pouvoirs*, n° 114, 2005, pp. 89-99.

AZRIA (R.), « Le judaïsme, contours et limites de la reconnaissance », *Archives de sciences sociales des religions*, Numéro 129 — Janvier-Mars 2005, pp. 135-150.

BÄCKSTRÖM (A.), « Religion in the Nordic Countries: Between Private and Public », *Journal of Contemporary Religion*, 29:1, 2014, pp. 61-74.

BADER (C.), FINKE (R.), « What Does God Require? Understanding Religious Context and Morality », *in* HITLIN (S.), *ed.*, VAISEY(S.), *ed.*, *Handbook of The Sociology of Morality*, Springer, 2010, pp. 241-254.

BAER (S.), « Privatizing Religion. Legal Groupism, No-Go-Areas, and the Public-Private-Ideology in Human Rights Politics », *Constellations*, Volume 20 (n° 1) — 2013, pp. 68-84.

BAKER (W. E.), INGELHART (R.), « Modernization, Cultural Change, and the Persistence of Traditional Values », *American Sociological Review*, Vol. 65, No. 1, 2000, pp. 19-51.

BALDI (G.), « Re-conceptualizing Equality in the Work Place: A Reading of the Latest CJEU's Opinions over the Practice of Veiling », *Oxford Journal of Law and Religion*, 2018, 7, pp. 296-312.

BANAKAR (R.), « Review essay. Having one's cake and eating it: the paradox of contextualisation in socio-legal research », *International Journal of Law in Context*, 7(4), 2011, pp. 487-503.

BANAKAR (R.), « Whose Experience is *the* Measure of Justice? », *Legal Ethics*, 10:2, 2007, pp. 209-222;

BARNABE (B.), « L'Office du juge et la Liturgie du Juste », *Cahiers Philosophiques*, 147(4), 2016, pp. 48-67.

BARONESS BERRIDGE Of the Vale of CATMOSE, « The All Party Parliamentary Group on International Freedom of Religion or Belief », *Ecclesiastical Law Journal*, vol. 17, n° 1, January 2015, pp. 36-41.

BARONESS HALE of RICHMOND, « Freedom of Religion and Freedom from Religion », *Ecclesiastical Law Journal*, vol. 19, n° 1, January 2017, pp. 3-13.

BARKER (E.), « The Not-So-New Religious Movements: Changes in the 'Cult Scene' Over the Past Forty Years », *Temenos*, Vol. 50, No. 2, 2014, pp. 235-256.

BARKER (E.), « The Scientific Study of Religion? You Must Be Joking! », *Journal for the Scientific Study of Religion*, Vol. 34, No. 3, 1995, pp. 287-310.

BARRAS (A.), « Transnational Understandings of Secularisms and Their Impact on the Right to Religious Freedom—Exploring Religious Symbols Cases at the UN and ECHR », *Journal of Human Rights*, 11:2, 2012, pp. 263-279.

BARRERO ORTEGA (A.), « El Caso 'Lautsi': la Cara y la Cruz », *Revista Española de Derecho Constitucional*, No. 94, Enero/Abril 2012, pp. 379-409.

BASDEVANT-GAUDEMET (B.), « Le Pape Evêque de Rome », *Pouvoirs*, n° 162(3), 2017, pp. 115-126.

BASTIAN (J. P.), « Pluralisation religieuse, pouvoir politique et société en Amérique Latine », *Pouvoirs*, Numéro 98 — 2001, pp. 135-146.

BÁRTOVÁ (Z.), « L'authenticité comme valeur centrale de l'engagement religieux dans la culture de consommation: le cas des pratiquants bouddhistes en France et en République tchèque », *Studies in Religion/Sciences Religieuses*, 2021, Vol. 50(1), pp. 141-162.

BAUBEROT (J.), « L'évolution de la laïcité en France : entre deux religions civiles », *Diversité urbaine*, 9(1), 2009, pp. 9-25.

BAUBEROT (J.), « Pour une sociologie interculturelle et historique de la laïcité », *Archives de sciences sociales des religions*, Numéro 146 — avril-juin 2009, pp. 183-199.

BAUDÉ (M.), « Les Communautés Sociales à l'Epreuve du Sens », *Le Journal des Psychologues*, n° 354, 2, 2018, pp. 24-29.

BAUMEISTER (A.), « Ways of belonging. Ethnonational minorities and models of 'differentiated citizenship' », *Ethnicities*, 3(3), 2003, pp. 393-416.

BEAMAN (J.), « France's Ahmeds and Muslim others: The entanglement of racism and Islamophobia », *French Cultural Studies*, Vol. 32(3), 2021, pp. 269-279.

BEAMAN (L. G.), « Religious Diversity in the Public Sphere: The Canadian case », *Religions*, 8, 2017, pp. 259-278.

BEAMAN (L. G.), STEELE (C), PRINGNITZ (K.), « The inclusion of nonreligion in religion and human rights », *Social Compass*, Vol. 65(1), 2018, pp. 43–61.

BEALE (H. K.), « Religious Freedom in American History », *The Historian*, Vol. 14, No. 1, 1951, pp. 45-69.

BECKFORD (J.), « Religious Pluralism and Diversity: Response to Yang and Thériault », *Social Compass*, 57(2), 2010, pp. 217-223.

BECKFORD (J.), « Response to Adam Possamai », *Journal of Sociology*, Vol. 53(4), 2017, pp. 836-838.

BECKFORD (J.), « SSSR Presidential Address Public Religions and the Postsecular: Critical Reflections », *Journal for the Scientific Study of Religion*, Vol. 51, No. 1, 2012, pp. 1-19.

BELL (C. M.), « Religion and Chinese Culture: Toward an Assessment of 'Popular Religion' », *History of Religions*, 29(1), 1989, pp. 35-57.

BELLEY (J.-G.), « L'État et la régulation juridique des sociétés globales. Pour une problématique du pluralisme juridique », *Sociologie et sociétés*, 18(1), 1986, pp. 11-32.

BENNETT (M. R.), PARAMESHWARAN (M.), SCHMID (K.), RAMOS (M.), HEWSTONE (M.), « Effects of neighbourhood religious diversity and religious and national identity on neighbourhood trust », *Group Processes & Intergroup Relations*, Vol. 25(5), 2022, pp. 1248-1268.

BENNETT (O.), « On religion and cultural policy: notes on the Roman Catholic Church », *International Journal of Cultural Policy*, Volume 15, Issue 2, pp. 155-170.

BENOIT (J.-L.), « L'évangélisation des Indiens d'Amérique », *Amerika* [online], Numéro 8 — 2013.

BENOIT (J.-L.), « Religion populaire et crise identitaire en Amérique latine », *Amerika* [en ligne], Numéro 6 — 2012.

BERMAN (P. S.), « Can Global Legal Pluralism Be Both "Global" and "Pluralistic"? », *Duke Journal of Comparative & International Law*, Vol. 29, 2019, pp. 381-403.

BERNATCHEZ (S.), « Introduction. La Laïcité comme Mode de Gouvernance des Religions », *Revue*

BERODOT (S.), POZZO (M. I.), « La inmigración sirio-libanesa en la ciudad de Rosario, Argentina: continuidades, desvanecencias e intercambios culturales », *Amerika*, vol. 5, 2011, paras. 1-65.

BERRY (S. E.), « A 'good faith' interpretation of the right to manifest religion? The diverging approaches of the European Court of Human Rights and the UN Human Rights Committee », *Legal Studies*, Vol. 37, No. 4, 2017, pp. 672–694.

BERRY (S. E.), « A Tale of two Instruments: Religious Minorities and the Council of Europe's Rights Regime », *Netherlands Quarterly of Human Rights*, Vol. 30/1, 2012, pp. 11–40.

BERRY (S. E.), « Religious Freedom and the European Court of Human Rights' Two Margins of Appreciation », *Religion and Human Rights*, 12, 2017, pp. 198-209.

BERTHON (J. P.), KASHIO (N.), « Les nouvelles voies spirituelles au Japon : état des lieux et mutations de la religiosité », *Archives de sciences sociales des religions*, 109, 2000, pp. 67-85.

BESSON (S.), « Subsidiarity in International Human Rights Law—What is Subsidiary about Human Rights? », *The American Journal of Jurisprudence*, Vol. 61, No. 1, 2016, pp. 69-107.

BIDIMA (J.-G.), « Beauté et Critique des Emblèmes : Politiques du Visible en Afrique », *Diogène*, Numéro 237 — 2012/1, pp. 96-108.

BIELEFELDT (H.), « Limiting Permissible Limitations: How to Preserve the Substance of Religious Freedom », *Religion and Human Rights*, 15, 2020, pp. 3-19.

BILLAUD (J.), « Mariage '*charia style'* : pratiques quotidiennes de l'éthique islamique en Angleterre », *Archives de sciences sociales des religions*, 179, 2017, pp. 213-232.

BISZLYGA (A.), KUCZMA (P.), « The Outline of Constitutional Regulations on the Freedom of Conscience and Religion in Poland », *Religions*, 13:7, 2022, pp. 1-9.

BLACKBURN (S.), « Group Minds and Expressive Harm », *Maryland Law Review*, Volume 60, Issue 3, 2001, pp. 467-491.

BLANCARTE (R.), « Laïcité au Mexique et en Amérique Latine. Comparaisons », *Archives de sciences sociales des religions*, Numéro 146 — avril-juin 2009, pp. 17-40.

BLITT (R. C.), « Russia's 'Orthodox' Foreign Policy: the Growing Influence of the Russian Orthodox Church in Shaping Russia's Policies Abroad », U. Pa. J. Int'l L., vol. 33, issue 2, 2011, pp. 363-460.

BODGAN (R.), TAYLOR (S.), « Toward a Sociology of Acceptance: The Other Side of the Study of Deviance », *Social Policy*, vol.18, n° 2, 1987, pp. 34-39.

BOGNÁR (B.), KMETTY (Z.), « Believing without moralising: Secularised religiousness in Hungary », *Social Compass*, Vol. 67(4), 2020, pp. 576-598.

BOMHOFF (J. A.), « 'The rights and freedoms of others': The ECHR and its peculiar category of conflicts between individual fundamental rights », *in* BREMS (E.), *ed.*, *Conflicts Between Fundamental Rights*, Intersentia, Antwerp, 2008, 690 p.

BONI (T.), « Habiter le Monde en Humains », *Diogène*, Numéro 237 — 2012/1, pp. 86-95.

BOZARSLAN (H.), « La laïcité en Turquie », *Matériaux pour l'histoire de notre temps*, n°78, 2005, pp. 42-49.

BOSA (B.), « L'Australie : mises en perspective historiques », *Pouvoirs*, n° 141, 2012, pp. 5-16.

BOUDON (R.), « A propos du relativisme des valeurs : retour sur quelques intuitions majeures de Tocqueville, Durkheim et Weber », *Revue française de sociologie*, 2006/4, Vol. 47, pp. 877-897.

BOUDON (R.), MINGASSON (L.), « Entre valeurs de l'espace privé et valeurs communes. Une articulation complexe », *Informations sociales*, 2006/8, n° 136, pp. 26-34

BOUMA (G.), ARUNACHALAM (D.), GAMLEN (A.), HEALY (E.), « Religious Diversity through a super-diversity lens: National, sub-regional and socio-economic religious diversities in Melbourne », *Journal of Sociology*, 00(0), 2021, pp.1-19.

BOUMA (G. D.), HALAFOFF (A.), « Australia's Changing Religious Profile—Rising Nones and Pentecostals, Declining British Protestants in Superdiversity: Views from the 2016 Census », *JASR*, 30.2, 2017, pp. 129-143.

BOUQUET (S.), « La Sémiologie Linguistique de Saussure : une Théorie Paradoxale de la Référence », *Sémiolgie et histoire des théories du language*, n° 107, 1992, pp. 84-95.

BOURDIN (B.), « Dieu et la liberté : une alliance controversée », *L'Année canonique*, 51(1), 2009, pp. 295-306.

BOTTICI (C.), CHALLAND (B.), « Rethinking Political Myth. The Clash of Civilizations as a Self-Fulfilling Prophecy », *European Journal of Social Theory*, vol. 9(3), 2006, pp. 315–336.

BOYER (A.), « Comment l'Etat laïc connaît-il les religions ? », *Archives de sciences sociales des religions*, Numéro 129 — Janvier-Mars 2005, pp. 37-49.

BOYLE (K.), « Human Rights, Religion and Democracy: The Refah Party Case », *Essex Human Rights Review*, Vol. 1, n° 1, pp. 1-16.

BRAMI (J.), « The Politics of Religion in the United States », *Revue LISA/LISA e-journal* [Online], Vol. IX, n°1, 2011.

BRATZA (N.), « The 'Precious Asset': Freedom of Religion Under the European Convention on Human Rights », *Ecclesiastical Law Journal*, vol. 14, n° 2, pp. 256-271.

BRAUCH (J. A.), « The Dangerous Search for an Elusive Consensus: What the Supreme Court *Should* Learn from the European Court of Human Rights », *Harvard Law Journal*, vol. 52, n° 2, 2009, pp. 277-318.

BRAUCH (J. A.), « The Margin of Appreciation and the Jurisprudence of the European Court of Human Rights: a Threat to the Rule of Law », *Columbia Journal of European Law*, vol. 11, 2005, pp. 113-150.

BREMS (E.), « Above Children's Heads — The Headscarf Controversy in European Schools from the Perspective of Children's Rights », *International Journal of Children's Rights*, 14, n°2, 2006, pp. 119-136.

BREMS (E.), BRIBOSIA (E.), RORIVE (I.), Van DROOGHENBROECK (S.), « Le port de signes religieux dans l'espace public: vérité à Strasbourg, erreur à Genève ? », *Journal des Tribunaux*, Vol. 131ème année, no.6489, pp. 602-603.

BREMS (E.), « Face Veil Bans in the European Court of Human Rights: the Importance of Empirical Findings », *Journal of Law and Policy*, n° 22, 2014, pp. 517-551.

BREMS (E.), « Human Rights: Minimum and Maximum Perspectives », *Human Rights Law Review*, 9:3, 2009, pp. 349-372.

BREMS (E.), LAVRYSEN (L.), « Procedural Justice in Human Rights Adjudication: The European Court of Human Right », *Human Rights Quarterly*, Vol. 35, No. 1, February 2013, pp. 176-200.

BREMS (E.), « Smart Human Rights Integration », *in* BREMS (E.), *ed.*, OUALD-CHAIB (S.), *ed.*, *Fragmentation and Integration in Human Rights Law*, Cheltenham, Edward Elgar Publishing, 2018, 224 p.

BRESKAYA (O.), DE STEFANI (P.), GIORDAN (G.), « The *Lautsi* Legacy: A New Judgment on the Crucifix in Classrooms and the Multiculturalist Turn on Freedom of/from Religion in Italy », *Religions*, 2022, 13(7), 666.

BRESKAYA (O.), FRANCIS (L. J.), GIORDAN (G.), « Perceptions of the Functions of Religion and Attitude toward Religious Freedom: Introducing the New Indices of the Functions of Religion (NIFoR) », *Religions*, 2020, 11, 507.

BRESKAYA (O.), GIORDAN (G.), RICHARDSON (J. T.), « Human Rights and Religion: a Sociological Perspective », *Journal for the Scientific Study of Religion*, 57(3), 2018, pp. 419-431.

BRESKAYA (O.), GIORDAN (G.), « Measuring the Social Perception of Religious Freedom: a Sociological Perspective », *Religions*, 10(4), 2019, pp. 274 et ss.

BRESKAYA (O.), GIORDAN (G.), ZRINSČAK (S.), « Religious freedom: between governance and social perception. Liberté religieuse : entre gouvernance et perception sociale », *Social Compass*, Vol. 68(3), 2021, pp. 263-281.

BRESKAYA (O.), GIORDAN (G.), ZRINSČAK (S.), « Religious freedom: thinking sociologically », *Religion, State & Society*, 50:3, 2022, pp. 246-253.

BRESKAYA (O.), GIORDAN (G.), ZRINSČAK (S.), « Social perception of religious freedom: Testing the impact of secularism and state-religion relations », *Social Compass*, Vol. 68(3), 2021, pp. 282–300.

BRIBOSIA (E.), RINGELHEIM (J.), RORIVE (I.), « Reasonable Accommodation for Religious Minorities: a Promising Concept for European Antidiscrimination Law? », *Maastricht Journal of European and Comparative Law*, Volume 17, Issue 2, June 2010, pp. 137-161.

BRIBOSIA (E.), RORIVE (I.), Van Den EYNDE (L.), « Same-Sex Marriage: Building an Argument Before the European Court of Human Rights in Light of the US Experience », *Berkley Journal of International Law*, vol. 32, n° 1, 2014, pp. 1-43.

BROWN (N. J.), « Sharia and State in the Modern Muslim Middle East », *International Journal of Middle East Studies*, vol. 29, n° 3 (Aug. 1997), pp. 359-376.

BRUBAKER (R.), « Between nationalism and civilizationism: the European populist moment in comparative perspective », *Ethnic and Racial Studies*, 2017, pp. 1191-1226.

BRUBAKER (R.), « National Minorities, Nationalizing States, and External National Homelands in the New Europe », *Daedalus*, Volume 124 (n° 2), Spring 1995, pp. 107-132.

BRUNET (P.), « Que reste-t-il de la volonté générale ? », *Pouvoirs*, n° 114, 2005, pp. 5-19.

BUBÍK (T.), « Relationship between Religion, Politics, and Society in the First Postcommunist Decade: The Cases of the Czech Republic and Poland », *Anthropos*, Bd. 109, H. 1., 2014, pp. 243-249.

BURGOŃSKI (P.), « Religion and Polish Foreign Policy in the XXI Century », *Politics and Religion Journal*, Vol. 14, No 2, 2020, pp. 337-359.

BURGORGUE-LARSEN (L.), « Le droit international des droits de l'homme existe-t-il ? », *RDLF* [online], 2017, chron. n°08.

BUNCH (C.), « Women's Rights as Human Rights: Toward a Re-Vision of Human Rights », *Human Rights Quarterly*, Vol. 12, No. 4, 1990, pp. 486-498.

CADGE (W.), KONIECZNY (M. E.), « 'Hidden in Plain Sight': The Significance of Religion and Spirituality in Secular Organizations », *Sociology of Religion*, 2014, 75:4, pp. 551-563.

CALI (B.), KOCH (A.), BRUCH (N.), « The Legitimacy of Human Rights Courts: A Grounded Interpretivist Analysis of the European Court of Human Rights », *Human Rights Quarterly*, Vol. 35, No. 4, November 2013, pp. 955-984.

CALLAMARD (A.), « The Expression of Religious Beliefs: In the Name of Pluralism, although Not Quite Religious », *Religion and Human Rights*, 12 (2017), pp. 153-163.

CALO (Z. R.), « Pluralism, Secularism, and the European Court of Human Rights », *Journal of Law and Religion*, Vol. 26, No. 1 (2010-2011), pp. 261-280.

CAMPBELL (C.), « The city of law », *International Journal of Law in Context*, 5(3), 2009, pp. 243-261.

CAMPBELL (J. R.), « The role of lawyers, judges, country experts and officials in British asylum and immigration law », *International Journal of Law in Context*, 16, 2020, pp. 1-16.

CAMPERGUE (C.), « Le bouddhisme tibétain en France », *Histoire, Monde et Cultures Religieuses*, 2013/1, pp. 137-168.

CARCASSONE (G.), « Penser la Loi », *Pouvoirs*, n° 114, 2005, pp. 39-52.

CAROZZA (P. G.), « Subsidiarity as a Structural Principle of International Human Rights Law », American Journal of International Law, vol. 97:38, 2003, pp. 38-79.

CARPENTER (B.), « 'The Barbarians Have Come' to Poland », *World Literature Today*, Vol. 78, No. 2, May—Aug. 2004, pp. 48-50.

CARTER Jr. (W. L.), « Rethinking Subsidiarity in International Human Rights Adjudication », *Hamline Journal of Public Law & Policy*, 30, 2008, pp. 319-334.

CARTER (S. L.), « The Resurrection of Religious Freedom », *Harvard Law Review*, vol. 107, 1993, pp. 108-142.

CASANOVA (J.), « Civil Society and Religion: Retrospective Reflections on Catholicism and Prospective Reflections on Islam », *Social Research*, Vol. 68, No. 4, 2001, pp. 1041-1080.

CASANOVA (J.), « Private and Public Religions », *Social Research*, Vol. 59, No. 1, 1992, pp. 17-57.

CASANOVA (J.), « The Secular and Secularisms », *Social Research*, Vol. 76, No. 4, 2009, pp. 1049-1066.

CASSESE (S.), « Existe-t-il une 'Constitution Globale' » », *Jus Politicum* [Online], Numéro 19 — Janvier 2018, pp. 19-24.

CASSIERS (A.), « L'évolution de la jurisprudence de la Commission européenne des droits de l'homme et de la Cour européenne des droits de l'homme sur la question de l'avortement », *Family and Law*, 2021, pp. 1-41.

CERCHIARO (F.), « Identity loss or identity re-shape? Religious identification among the offspring of 'Christian–Muslim' couples », *Journal of Contemporary Religion*, 35:3, 2020, pp. 503-521.

CESARI (J.), FOX (J.), « Institutional Relations Rather Than Clashes of Civilizations: When and How Is Religion Compatible with Democracy? », *International Political Sociology*, 2016, 00, pp. 1-17.

CEVA (E.), « Why Toleration Is Not the Appropriate Response to Dissenting Minorities' Claims », *European Journal of Philosophy*, 23:3, pp. 633–651.

CHAIBI (M.), « Protection of European Values at the International Level: The European Court of Human Rights and Freedom of Religion », *Peace and Human Rights Governance*, 6(1), pp. 9-38.

CHAIBI (M.), « Religion and Pluralism before the Inter-American Court of Human Rights: From Individualizing Religious Freedom to Deregulating the Religious Market », *Oxford Journal of Law and Religion*, Volume 11, Issue 2-3, 2022, pp. 246-262.

CHAIBI (M.), « Religion in Society: New Paradigm and New Challenges », *in What's new in human rights doctoral research. A collection of critical literature reviews. Vol V*, Padova, Padova University Press, 2023, pp. 121-139.

CHAIBI (M.), « State and Church Relationships under the European Convention on Human Rights: a value framework for state action », *Religions*, 13(7), 797.

CHAMPLIN (T. S.), « Tendencies », *Proceedings of the Aristotelian Society*, Vol. 91, 1990-1991, pp. 119-133.

CHAPMAN (A. R.), « Inconsistency of Human Rights Approaches to Human Dignity with Transhumanism », *American Journal of Bioethics*, Volume 10, Number 7, July 2010, pp. 61-63.

CHEMILLIER-GENDREAU (M.), « La laïcité dans le monde », *Raison présente*, n°149-150, 2004, pp. 55-64.

CHEVALLIER (J.), « À quoi sert la distinction droit public/droit privé ? », *in* BAILLEUX (A.), *ed*., BERNARD (D.), *ed*., Van MEERBEECK (J.), *ed*., *Distinction (Droit) Public/(Droit) Privé. Brouillages, innovations et influences croisées*, Bruxelles, Presses de l'Université Saint-Louis, 2022, pp. 9-25.

CHEVALLIER (J.), « L'état Régulateur », *Revue française d'administration publique*, 2004/3, n° 111, pp. 473-482.

CHEVRIER (M.), « Une laïcité en Amérique. Genèse de la loi québécoise sur la laïcité de l'Etat », *Revue du droit des religions*, vol. 14, 2022, pp. 15-34.

CHOMSKY (N.), « Lecture I: What is Language », *The Journal of Philosophy*, vol. 110, 2013, pp. 645-662.

CHOMSKY (N.), « Lecture II: What Can We Understand », *The Journal of Philosophy*, vol. 110, 2013, pp. 663-684.

CÍVICO ARIZA (A.), COLOMO MAGAÑA (E.), GONZÁLEZ GARCÍA (E.), « Religious Values and Young People: Analysis of the Perception of Students from Secular and Religious Schools (Salesian Pedagogical Model) », *Religions*, 11, 2020, p. 415.

CLEMENS (L.), « Le public/privé cher A. Arendt: nommer le brouillage et penser l'entre-deux », *in* BAILLEUX (A.), *ed*., BERNARD (D.), *ed*., Van MEERBEECK (J.), *ed*., *Distinction (Droit) Public/ (Droit) Privé. Brouillages, innovations et influences croisées*, Bruxelles, Presses de l'Université Saint-Louis, 2022, pp. 143-158.

CLEMENTIN-OJHA (C.), « La question de la définition de l'identité hindoue », *Archives de sciences sociales des religions*, 186, 2019, pp. 163-182.

CLENDENEN (A.), « Encounter with the Unconscious: Hildegard in Jung », *Jung Journal: Culture & Psyche*, Vol. 3, No. 1, 2009, pp. 39-56.

COLEMAN (J. S.), « Social Theory, Social Research, and a Theory of Action », *American Journal of Sociology*, 1986, pp. 1309-1335.

CORNELIO (J.), « The nationalisation of religion: Youth and Soka Gakkai in Singapore », *Social Compass*, Vol. 65(1), 2021, pp. 114-130.

COTTA (S.), « Droit et Justice dans le De Libero Arbitrio de St. Augustin », *Archiv für Rechts-und Sozialphilosophie*, vol. 47, 1967, pp. 159-172.

COTTERRELL (R.), « The struggle for law: some dilemmas of cultural legality », *International Journal of Law in Context*, 4(4), 2009, pp. 373-384.

COUDERC (M.), « Les Fonctions de la Loi sous le Regard de Commandeur », *Pouvoirs*, n° 114, 2005, pp. 21-37.

CROWDER (G.), « Two Concepts of Liberal Pluralism », *Political Theory*, Volume 35, Number 2, April 2007, pp. 121-146.

CZAJA (J.), « Polish Church and European Integration », *Yearbook of Polish European Studies*, Issue 3, 1999, pp. 107-120.

DA COSTA (E.), « La laicidad uruguaya », *Archives de sciences sociales des religions*, Numéro 146 — avril-juin 2009, pp. 137-155.

DA COSTA (N.), « Religion and public space in the Uruguayan '*laïcité'* », *Social Compass*, Vol. 65(4), 2018, pp. 503-515.

DALIBERT (M.), « From Ni putes ni soumises to #metoo in the French press: Between the hegemony of Whiteness and the Otherness of Muslims », *French Cultural Studies*, Vol. 32(3), 2021, pp. 235-250.

DALLMAYR (F. R.), DELBAERE-GARANT (J.), « Humaniser l'Humanité. La signification universelle des sciences sociales », *Diogène*, Numéro 237 — 2012/1, pp. 37-51.

DALVI (S.), « Homosexuality and the European Court of Human Rights: Recent Judgments Against the United Kingdom and Their Impact on Other Signatories to the European Convention of Human Rights », *University of Florida Journal of Law and Policy*, Vol. 15, 2004, pp. 467-525.

DALY (E.), « Political liberalism and French national identity in the wake of the face-veiling law », *International Journal of Law in Context*, 9(3), 2013, pp. 366-385.

DANCHIN (P. G.), « Islam in the Secular *Nomos* of the European Court of Human Rights », *Michigan Journal of International Law*, Volume 32 - 2011, pp. 663-747.

DANCHIN (P. G.), « Suspect Symbols: Value Pluralism as a Theory of Religious Freedom in International Law », *The Yale Journal of International Law*, Volume 33:1, 2008, pp. 1-61.

DANGUBIĆ (M.), VERKUYTEN (M.), STARK (T. H.), « Rejecting Muslim or Christian religious practices in five West European countries: a case of discriminatory rejection? », *Ethnic and Racial Studies*, Vol. 43, No. 16, 2020, pp. 306-326.

DARGENT (C.), « Recul du catholicisme, croissance des non-affiliés et des minorités religieuses », *La France des Valeurs*, 2019, pp. 221-227.

DARWALL (S.), « The Sociable and the Unsociable », *Philosophical Topics,* Vol. 42, No. 1, 2014, pp. 201-217.

DA SILVEIRA (P.), « Deux conceptions de la neutralité de l'état », *Philosophiques*, 23(2), 1996, pp. 227-251.

DAVIE (G.), « The role of religious diversity in social progress », *Ethnicities*, Vol. 22(4), 2022, pp. 559-572.

DAWES (S.), « Islamophobia, racialisation and the 'Muslim problem' in France », *French Cultural Studies*, Vol. 32(3), 2021, pp. 179-186.

DEAGAN (K.), « Colonial Origins and Colonial Transformations in Spanish America », *Historical Archaeology*, Vol. 37, No. 4, 2003, pp. 3-13.

DE CERTEAU (M.) « La culture dans la société », *Etudes*, 1972, pp. 389-408.

DE CERTEAU (M.) « Structures sociales et autorités chrétiennes », *Etudes*, 1969, pp. 128-142.

DE CERTEAU (M.) « Structures sociales et autorités chrétiennes (*suite*) », *Etudes*, 1969, pp. 285-293.

DE GAULMYN (I.), « Le Gouvernement du Vatican. La réforme de la Curie », *Pouvoirs*, n° 162(3), 2017, pp. 35-46.

DE HANAS (D. N.), SHTERIN (M.), « Religion and the rise of populism », *Religion, State & Society*, 2018, 46:3, 2018, pp. 177-185.

DE HARTMAN (É.), KELLER (A.), « L'axiologie et ses Divisions », *Revue Philosophique de la France et de l'Étranger*, T. 30, 1890, pp. 466-479.

DE LA TORRE (R.), GUTIERREZ (C.), HERNANDEZ (A.), « Religious reconfiguration in Mexico : Beliefs and Practices National Survey, 2016 », *Social Compass*, 2020, Vol. 67(3), pp. 349-371.

DELGRANGE (X.), LEROUXEL (H.), « L'accommodement raisonnable, bouc émissaire d'une laïcité inhibitrice en Belgique », *in* BRIBOSIA (E.), *ed.*, RORIVE (I.), *ed.*, *L'accommodement de la diversité religieuse. Regards croisés—Canada, Europe, Belgique*, Bruxelles, P.I.E. Peter Lang, 2015, pp. 203-286.

DEL MAR (M.), « Legal fictions and legal change », *International Journal of Law in Context*, 9(4), 2013, pp. 442-465.

DELMAS-MARTY (M.), « Les droits de l'Homme dans un monde en mouvement : anciennes et nouvelles limites, refus de toute limite », *Droits Fondamentaux*, n° 15, 2017, pp. 1-15.

DE MELO MARTÍN (I.), « Human Dignity, Transhuman Dignity, and All That Jazz », *American Journal of Bioethics*, Volume 10, Number 7, July 2010, pp. 53-54.

DE ROSNY (L.), « L'idée de Dieu dans Philosophie Religieuse de la Chine », *Bulletin de la Ligue Nationale contre l'Athéisme*, 12ème Année, 1899, pp. 165-186.

DEROUSSIN (D.); « Raymond Saleilles : le droit, la méthode et la postérité », *in* AUDREN (F.), *ed.*, CHÊNE (C.), *ed.*, MATHEY (N.), *ed.*, VERGNE (A.), *ed.*, *Raymond Saleilles et au-delà...*, Dalloz, Paris, 2013, 192 p.

DE STEFANI (P.), « The Dangerous Illusion of a 'National Path' to Human Rights », *Peace and Human Rights Governance*, Volume 6, Issue 2, 2022, pp. 103-107.

DIAS BURILLO (V. J.), « De la *Dignitatis Humanae* a la laicidad positiva: la libertad religiosa en la consolidación de la democracia española », *Diacronie — Studi di Storia Contemporanea*, N° 26 (2) — 2016, documento 7.

DÍEZ DE VELASCO (J.), « The Visibilization of Religious Minorities in Spain », *Social Compass*, 57(2), 2010, pp. 235-252.

DIVAY (S.), « L'ivg : un droit concédé encore à conquérir », *Travail, genre et sociétés*, 2003/1, N° 9, pp. 197-222

DOMINGO (R.), « Religion for Hedgehogs? An Argument against the Dworkinian Approach to Religious Freedom », *Oxford Journal of Law and Religion*, Vol. 2, No 2, 2013, pp. 371-392.

DONNELLY (J.), « The Relative Universality of Human Rights », *Human Rights Quarterly*, Volume 28 — Number 2, May 2007, pp. 281-306.

DOYLE (D.), « Religious Freedom in Canada », *Journal of Church and State*, Vol. 26, No. 3, 1984, pp. 413-435.

DOYTCHEVA (M.), « On the edge of diversity: Anti-Muslim racism and discrimination in white diversity spaces », *French Cultural Studies*, Vol. 32(3), 2021, pp. 219-234.

DRAULANS (V.), HALMAN (L.), « Mapping Contemporary Europe's Moral and Religious Pluralist Landscape: An Analysis Based on the Most Recent European Values Study Data », *Journal of Contemporary Religion*, 20:2, 2005, pp. 179-193.

DUNN (K. M.), KLOCKER (N.), SALABAY (T.), « Contemporary racism and Islamaphobia in Australia. Racializing religion », *Ethnicities*, Vol 7(4), 2007, pp. 564-589.

DURKHEIM (E.), « Communauté et société selon Tönnies », *Sociologie*, n°2, vol. 4, 2013 [Online].

DURKHEIM (E.), « 'Le Contrat Social de Rousseau' Histoire du Livre », *Revue de Métaphysique et de Morale*, T. 25, No. 1, 1918, pp. 1-23.

DURKHEIM (E.), *Textes. 1. Eléments de théorie sociale*, Editions de minuit, Collection : Le sens commun, Paris, 1975, pp. 233-241.

DUSSAGE (O.), « Analyse théorique des distinctions nationales du droit public et du droit privé au sein des systèmes juridiques européens », *in* BAILLEUX (A.), *ed*., BERNARD (D.), *ed*., Van MEERBEECK (J.), *ed*., *Distinction (Droit) Public/(Droit) Privé. Brouillages, innovations et influences croisées*, Bruxelles, Presses de l'Université Saint-Louis, 2022, pp. 83-114.

EDER (K.), « Review: Rationalist and Normative Approaches to the Sociological Study of Law », *Law & Society Review*, Vol. 12, No. 1, 1977, pp. 133-144.

EDMUNDS (J.), « The limits of post-national citizenship: European Muslims, human rights and the *hijab* », *Ethnic and Racial Studies*, 35:7, 2012, pp. 1181-1199.

EHRLICH (E.), « Montesquieu and Sociological Jurisprudence », *Harvard Law Review*, Vol. 29, No. 6, 1916, pp. 582-600.

EICHBAUER (M. H.), « The Shaping and Reshaping of the Relationship between Church and State from Late Antiquity to the Present: A Historical Perspective through the Lens of Canon Law », *Religions*, 13(5), 2022, 378.

EISENLOHR (P.), « Media and Religious Diversity », *Annual Review of Anthropology*, 41, 2012, pp. 37-55.

ELGIN (D.), « The Self-Guiding Evolution of Civilizations », *Systems Research and Behavioral Science*, 20, 2003, pp. 323-337.

EMILSEN (W. W.), « The New Atheism and Islam », *The Expository Times*, 123(11), 2012, pp. 521-528.

ESCAFRÉ-DUBLET (A.), GUIRAUDON (V.), TALPIN (J.), « Fighting discrimination in a hostile political environment: the case of "colour-blind" France », *Ethnic and Racial Studies*, 46:4, pp. 667-685.

ESQUIVEL (J. C.), « Cultura política y poder ecclesiástico encrucijadas para la construcción del Estado laico en Argentina », *Archives de sciences sociales des religions*, Numéro 146 — avril-juin 2009, pp. 41-59.

ESSER (F.), STĘPIŃSKA (A.), HOPMANN (D. N.), « Populism and the Media. Cross-National Findings and Perspectives », *in* AALBERG (T.), *ed.*, ESSER (F.), *ed.*, REINEMANN (C.), *ed.*, STROMBACK (J.), *ed.*, De VREESE (C.), *ed*., *Populist Political Communication in Europe*, New York, Routledge, 2016, 412 p.

EVANS (C.), « Individual and Group Freedom in the European Cort of Human Rights: Cracks in the Intellectual Architecture », *Journal of Law and Religion*, Vol. 26, No. 1, 2010-2011, pp. 321-343.

EVANS (C.), THOMAS (C. A.) « Church-State Relations in the European Court of Human Rights », *Birmingham Young University Law Review*, Vol. 2006, Issue 3, 01/09/2006, pp. 699-726.

EVANS (M.), « The Freedom of Religion or Belief in the ECHR since *Kokkinakis.* Or "Quoting *Kokkinakis*" », *Religion and Human Rights*, Vol. 12, 2017, pp. 83-98.

FATH (S.), « De la non-reconnaissance à une demande de légitimation ? Le cas du protestantisme évangélique », *Archives de sciences sociales des religions*, Numéro 129 — Janvier-Mars 2005, pp. 151-162.

FELICIANI (G.), « La liberté de religion dans le contexte du Traité de Lisbonne », *L'Année Canonique*, 2011/1, pp. 183-189.

FERRARI (A.), « Le droit européen de liberté religieuse au temps de l'Islam », *Stato, Chiese e Pluralismo Confessionale* [revue en ligne : www.statoechiese.it], n° 16/2017, pp. 1-16.

FERRARI (S.), « Droits de l'homme, droits de Dieu : Une inévitable tension ? », *Social Compass*, Vol. 65(1), 2021, pp. 11-24.

FERRARI (S.), « Law and Religion in a Secular World: A European Perspective », *Ecclesiastical Law Journal*, 14, 2014, pp. 355-370.

FERRI (M.), « The freedom to wear religious clothing in the case law of the European Court of Human Rights: an appraisal in the light of states' positive obligations », *Religion, State and Society*, 45:3-4, 2017, pp. 186-202.

FIFKAK (V.), IZVOROVA (L.), « Language and Persuasion: Human Dignity at the European Court of Human Rights », *Human Rights Law Review*, 2022, 22, pp. 1-24.

FINKE (R.), MARTIN (R. R.), « Ensuring Liberties: Understanding State Restrictions on Religious Freedom », *Journal of the Scientific Study of Religion*, Volume 53 (No 4) — December 2014, pp. 687-705.

FINKE (R.), MARTIN (R. R.), FOX (J.), « Explaining Discrimination against Religious Minorities », *Politics and Religion*, 10 — 2017, pp. 389-416.

FINKE (R.), MATAIC (D. R.), « Promises, Practices, and Consequences of Religious Freedom: a Global Overview », *University of St Thomas Law Journal*, Volume 15 (Issue 3), 2019, pp. 587-606.

FINKE (R.), MATAIC (D. R.), « Reconciling state promises and practices: Constitutional promises and discrimination against religious minorities », *Social Compass*, Vol. 68(3), 2021, pp. 301-320.

FINKE (R.), « Presidential address: Origins and Consequences of Religious Freedom: A Global Overview », *Sociology of Religion*, Volume 74 (N° 3) — Autumn 2013, pp. 297-313.

FINKE (R.), « Religious Deregulation: Origins and Consequences », *Journal of Church and State*, 1990, Vol. 32, No. 3, pp. 609-626.

FITZMAURICE (M.), *« Interpretation of Human Rights Treaties »*, *in* Shelton (D.) *et al.*, *The Oxford Handbook of International Human Rights Law*, Oxford University Press, 2013, pp. 740-770.

FJELLVANG (T.), « Socialization Values, Cultural-Religious Zones and Modernization Theory », *European Sociological Review*, Vol. 27, No. 2, April 2011, pp. 196- 211.

FOKAS (E.), « Directions in Religious Pluralism in Europe: Mobilizations in the Shadow of European Court of Human Rights Religious Freedom Jurisprudence », Oxford Journal of Law and Religion, 4, 2015, pp. 54–74.

FOKAS (E.), RICHARDSON (J. T.), « The European Court of Human Rights and Minority Religions: Messages Generated and Messages Received », *Religion, State and Society*, 45:3-4, 2017, pp. 166-173.

FOKAS (E.), « Rights not working? Grassroots-level impact of the European Court of Human Rights on religion », *Social Compass*, Vol. 67(2), 2020, pp. 191-205.

FOKAS (E.), « The legal status of religion minorities: Exploring the impact of the European Court of Human Rights », *Social Compass*, Vol. 65(1), 2018, pp. 25-42.

FOKAS (E.), « The European Court of Human Rights at the grassroots level: who knows what about religion at the ECtHR and to what effects? », *Religion, State and Society*, 45:3-4, 2017, pp. 249-267.

FORMOSO (B.), « Les sociétés libertaires existent-elles ? », *L'Homme*, n° 209, 2014, pp. 153-170.

FORSYTHE (D. P.), « IPSA Conference Plenary Lecture. The future of universal human rights: hard times, but… », *Australian Journal of Human Rights*, 2018, 24:3, pp. 281-291.

FOX (J.), « Civilizational Clash or Balderdash? The Causes of Religious Discrimination in Western and European Christian-Majority Democracies », *The Review of Faith & International Affairs*, 17:1, 2019, pp. 34-48.

FOX (J.), FINKE (R.), EISENSTEIN (M. A.), « Examining the causes of government-based discrimination against religious minorities in western democracies: societal-level discrimination and securitization », *Comparative European Politics*, 17 — 2019, pp. 885-909.

FOX (J.), FINKE (R.), « Ensuring Individual Rights through Institutional Freedoms: The Role of Religious Institutions in Securing Religious Rights », *Religions*, 12, 2021, pp. 273-296.

FOX (J.), « The Multiple Impacts of Religion on International Relations: Perceptions and Reality », *Politique étrangère*, 2006/4, pp. 1059-1071.

FOX (J.), « What is religious freedom and who has it? », *Social Compass*, 2021, 68(3), pp. 321-341.

FREDETTE (J.), « Reading Small French Muslim political parties through the lens of Baldwin's racial innocence », *French Cultural Studies*, Vol. 32(3), 2021, pp. 198-218.

FROST (A.), « The Limits of Advocacy », *Duke Law Journal*, 59(3), 2009, pp. 447-517.

FROUVILLE (O. de), « Une Théorie Non-Constitutionnaliste de la Constitution Internationale », *Jus Politicum*, Numéro 19 — Janvier 2018, pp. 95-103 [Online, retrieved from: http://juspoliticum.com/la-revue].

FRY (J. D.), « Pluralism, Religion, and the Moral Fairness of International Law », *Oxford Journal of Law and Religion*, Vol. 3, No 3, 2014, pp. 395-418.

FUENTES (A.), « Protection of Indigenous Peoples' Traditional Lands and Exploitation of Natural Resources », *International Journal on Minority and Group Rights*, Vol. 24, No. 3, 2017, pp. 229-253.

FUKUYAMA (F.), « Against Identity Politics. The New Tribalism and the Crisis of Democracy », *Foreign Affairs*, Volume 97 — Issue 5, September/October 2018, pp. 90-114.

FUKUYAMA (F.), « The End of History? », *The National Interest*, N° 16, September 1989, pp. 3-18.

GALSTON (W.), « Between Logic and Psychology: The Links between Value Pluralism and Liberal Theory », *The Review of Politics*, 75, 2013, pp. 97–101.

GALSTON (W.), « Democracy and Value Pluralism », *Social Philosophy and Policy*, 17(1), 2000, pp. 255-268.

GALTUNG (J.), WIRAK (A. H.), « Human Needs and Human Rights. A Theoretical Approach », *Bulletin of Peace Proposals*, Vol. 8, No. 3, 1977, pp. 251-258.

GARAY (A.), « La laïcité, principe érigé en valeur de la Convention européenne des droits de l'Homme », *Recueil Dalloz*, 2006, pp. 103 et ss.

GARCÍA-SEGURA (S.), MARTÍNEZ-CARMONA (M.-J.), GIL-PINO (C.), « Analysis of the Perceptions Shared by Young People about the Relevance and Versatility of Religion in Culturally Diverse Contexts », *Education Sciences*, 12, 2022, 667.

GARDAIR (E.), « Heuristiques et biais : quand nos raisonnement ne répondent pas nécessairement aux critères de la pensée scientifique et rationnelle », *Revue électronique de Psychologie Sociale*, n°1, 2007, pp. 35-46.

GARIGUE (P.), « Les changements sociaux et les valeurs culturelles », *L'Actualité Economique*, 34(3), 1958, pp. 426–435

GARLICKI (L.), « 'Constitutional Values' and the Strasbourg Court », *Acta Societatis Martensis*, 2009-2010, pp. 13-21.

GAVRÓNSKI (S.), TWORZYDLO (T.), BAJOREK (K.), « Determinants for the Development of the Activity of the Catholic Church in Poland in the Field of Social Communication », *Religions*, 12(10), 2021, pp. 845-856.

GAZIDEDE (A.), « Practice of European Court of Human Rights (ECHR) in the enforcement of courts' final decisions », *Academicus - International Scientific Journal*, Issue 12, 2015, pp. 38-46.

GEBAUER (J. E.), SEDIKIDES (C.), « Cultural religiosity: A neglected but powerful dimension of culture », *Current Opinion in Psychology*, 40, 2021, pp. 73-78.

GENET (J.-P.), « À propos de Pierre Bourdieu et de la genèse de l'État moderne », *Actes de la recherche en sciences sociales*, 2014/1, N° 201-202, pp. 98-105.

GHANEA (F.), « Are Religious Minorities Really Minorities? », *Oxford Journal of Law and Religion*, Vol. 1, No. 1, 2012, pp. 57-79.

GHANEM (C. Y.), « Integrating Muslim Migrants with a Gender Perspective? An Analysis of Integration Policies in the City of Brussels », *Peace and Human Rights Governance*, Volume 3, Issue 1, March 2019, pp. 9-33.

GIERYCZ (M.), « Life Issues Matter: Catholic Church and the Dispute on the Primary Morality Policy in Poland », *Politics and Religion Journal*, Vol. 14, No 2, 2020, pp. 283-311.

GIORDAN (G.), BRESKAYA (O.), « Divided by Religion, United by Gender: A Socio-religious interpretation of the 'Convention on the Elimination of All Forms of Discriminations against Women' », *Rivista Quadrimestrale di Scienze Storiche e Sociali*, n°1 — 2018, pp. 110-116.

GIORDAN (G.), « Dalla religione alla spiritualità: una nuova legittimazione del sacro? », *Quaderni di Sociologia*, Vol. 35 — 2004, pp. 105-117.

GIORDAN (G.), « Dio a Portata di Mouse. Credere e far Credere nell'era Digitale », *Credere Oggi*, Vol. 183 (3) — Mag/Giu 2011, pp. 18-28.

GIORDAN (G.), POSSAMAI (A.), « Mastering the devil: A sociological analysis of the practice of a Catholic exorcist », *Social Compass*, Vol. 66 (1) — 2018, pp. 74-91.

GIORDAN (G.), POSSAMAI (A.), « The over-policing of the devil: A sociology of exorcism », *Social Compass*, Vol. 63 (4) — 2016, pp. 444-460.

GIORDAN (G.), « The Body between Religion and Spirituality », *Social Compass*, 56(2), 2009, pp. 226-236.

GIORDAN (G.), ZRINSČAK (S.), « One Pope, Two Churches: Refugees, Human Rights and Religion in Croatia and Italy », *Social Compass*, Vol. 65 (1) — 2018, pp. 62-78.

GIORGI (A.), ANNICCHINO (P.), « 'Genuine' religions and their arena of legitimation in Italy – the role of the ECtHR », *Religion, State & Society*, 45:3-4, 2017, pp. 284-296.

GODDIJN (H. M. P.), « The sociology if religious orders and congregations », *Social Compass*, Vol. 7, Issue 5-6, pp. 431-447.

GOLDMAN (R. K.), « History and Action: The Inter-American Human Rights System and the Role of the Inter-American Commission on Human Rights », *Human Rights Quarterly*, 31(4), 2009, pp. 856-887.

GOLDSCHMIDT (V.), « État de nature et pacte de soumission chez Hegel », *Revue Philosophique de la France et de l'Étranger*, T. 154, 1964, pp. 45-65.

GONZALEZ (G.), « Les constatations du Comité des droits de l'homme des Nations unies en 2018 relatives à la liberté de religion en France », *Revue du droit des religions*, 9, 2020, pp. 175-187.

GÓRNY (A.), « All circular but different: Variation in patterns of Ukraine−to−Poland migration », *Population, Place and Space*, Volume 23, Issue 8, 2017, pp. 1-10.

GÓRSKI (E.), « From 'Socialist' to Postmodern Pluralism in Poland », *East European Politics and Societies*, Vol. 16, No. 1, 2002, pp. 249-277.

GORSKI (J. F.), « How the Catholic in Latin America Became Missionary », *International Bulletin of Missionary Research*, Vol. 27, No.2, pp. 59-64.

GRIM (B.), FINKE (R.), « International Religion Indexes: Government Regulation, Government Favoritism, and Social Regulation of Religion », *Interdisciplinary Journal of Research on Religion*, 2:1, 2006, pp. 1-40.

GROETHUYSEN (B.), « La conception de l'État chez Hegel et la philosophie politique en Allemagne », *Revue Philosophique de la France et de l'Étranger*, T. 97, 1924, pp. 180-207.

GROS (C.), « Métissage et identité. La mosaïque des populations et les nouvelles demandes ethniques », *Pouvoirs*, Numéro 98 — 2001, pp. 147-159.

GRÜLL (C.), WILSON (E.), « Universal or Particular... or Both? The Right to Freedom of Religion or Belief in Cross-Cultural Perspective », *The Review of Faith & International Affairs*, 16:4, pp. 88-101.

GRZYMALA-MOSZSCZNSKA (H.), « Established Religion vs. New Religions: Social Perception and Legal Consequences », *Occasional Papers on Religion in Eastern Europe*, Vol. 16, Issue 2, Article 5.

GUILBAUD (M.), « La loi de séparation de 1905 ou l'impossible rupture », *Revue d'histoire du XIXe siècle*, n° 28, 2004, pp. 163-173.

GUILLAUME (M.), « Les Ordonnances : Tuer ou Sauver la Loi ? », *Pouvoirs*, n° 114, 2005, pp. 117-129.

GUNATILLEKE (G.), « Criteria and Constraints: the Human Rights Committee's Test on Limiting the Freedom of Religion or Belief », *Religion and Human Rights*, 15, 2020, pp. 20-38.

GUNN (J. T.), « Limitations Clauses, Evidence, and the Burden of Proof in the European Court of Human Rights », *Religion and Human Rights*, 15, 2020, pp. 192-206.

GUNTHERT (A.), « La rétine du savant », *Études photographiques* [Online], 7, Mai 2000, 16 p.

GUO (Z.), « Public Order as a Protectable Interest », *Legal Studies*, Volume 41, No. 2, June 2021, pp. 1-20.

HABERMAS (G. R.), « The Plight of the New Atheism: A Critique », *Journal of the Evangelical Theological Society*, 51(4), 2008, pp. 813-827.

HABERMAS (J.), LENNOX (S.), LENNOX (F.), « The Public Sphere: An Encyclopedia Article (1964) », *New German Critique*, No. 3, 1974, pp. 49-55.

HAFNER-BURTON (E. M.), « National Human Rights Institutions », *in* HAFNER-BURTON (E. M.), *ed.*, *Making Human Rights a reality*, Princeton (New Jersey), Princeton University Press, 2013, pp. 164-175.

HAFNER-BURTON (E. M.), TSUTSUI (K.), « Justice Lost! The Failure of International Human Rights Law to Matter Where Needed Most », *Journal of Peace Research*, Vol. 44 — No. 4 (Special Issue on Protecting Human Rights), Jul. 2007, pp. 407-425.

HAJJAT (A.), « La 'femme musulmane opprimée' : genèse d'un nouveau genre littéraire à succès (1988–2003) », *French Cultural Studies*, Vol. 32(3), 2021, pp. 251-268.

HALL (H.), DELPORT (C.S.L.), « The young adult's perception of religion and formal structures: A postmodern perspective », *HTS Teologiese Studies/ Theological Studies*, 69(1), 2013, 10 p.

HANAÏ (M.-J.), « Desmitificar el mito de la Revolución mexicana », *Amerika*, vol. 4, 2011, paras. 1-31.

HANEGRAAFF (W. J.), « Reconstructing 'Religion' from the Bottom Up », *Numen*, Vol. 63, No. 5/6, 2016, pp. 567-605.

HART (H. L. A.), « Positivism and the Separation of Law and Morals », *Harvard Law Review*, Vol. 71, No. 4, 1958, pp. 593-629.

HARTMAN (R. S.), « Formal axiology and the measurement of values », *The Journal of Value Inquiry*, Volume 1, 1967, pp. 38-46.

HASS (B. T.), LUTEK (H.), « Fashion and Faith: Islamic Dress and Identity in The Netherlands », *Religions*, 10, 2019, 356-382.

HAUSER (J.), « Le Juge et la Loi », *Pouvoirs*, n° 114, 2005, pp. 139-153.

HAVLÍČEK (T.), KLINGOROVÁ (K.), « City with or without God? Features of post-secularism in religious landscape of post-communist Prague », *Social and Cultural Geography*, 19:6, 2017, pp. 789-811.

HAYNES (J.), « Trump and the Politics of International Religious Freedom », *Religions*, 2020, 11, pp. 385-405.

HEDGES (P.), « Multiple Religious Belonging after Religion: Theorizing Strategic Religious Participation in a Shared Religious Landscape as a Chinese Model », *Open Theology*, 2017, 3, pp. 48-72.

HEIDER (J.), « Unveiling the Truth Behind the French Burqa Ban: The Unwarranted Restriction of the Right to Freedom of Religion and the European Court of Human Rights », *Indiana International & Comparative Law Review*, Vol. 22, No. 1, 2012, pp. 93-129.

HEINICH (N.), « La Sociologie à l'Épreuve des Valeurs », *Cahiers Internationaux de Sociologie,* 2006/2, n° 121, pp. 287-315.

HENDERSON (E. A.), « Mistaken Identity: Testing the Clash of Civilizations Thesis in Light of Democratic Peace Claims », *British Journal of Political Science*, Jul., Vol. 34, No. 3, 2004, pp. 539-554.

HENDERSON (E. A.), « Not Letting Evidence Get in the Way of Assumptions: Testing the Clash of Civilizations Thesis with More Recent Data », *International Politics*, 42, 2005, pp. 458-469.

HENDERSON (E. A.), TUCKER (R.), « Clear and Present Strangers: The Clash of Civilizations and International Conflict », *International Studies Quarterly*, Vol. 45, No. 2, 2001, pp. 317-338.

HENNEBEL (L.), « La protection de 'l'intégrité spirituelle' des indigènes. Réflexions sur l'arrêt de la Cour interaméricaine des droits de l'homme dans l'affaire Comunidad Moiwana c. Suriname du 15 juin 2005 », *Revue Trimestrielle des Droits de l'Homme*, Volume 66 — 2006, pp. 253-276.

HENNEBEL (L.), « The Inter-american Court of Human Rights : the Ambassador of Universalism », *Quebec Journal of International Law*, Edition Spéciale — 2011, pp. 57-97.

HERMON-BELOT (R.), « La genèse du système des cultes reconnus : aux origines de la notion française de reconnaissance », *Archives de sciences sociales des religions*, Numéro 129 — Janvier-Mars 2005, pp. 17-35.

HERMON-BELOT (R.), FATH (S.), « 'La République ne reconnaît… aucun culte' », *Archives de sciences sociales des religions*, Numéro 129 — Janvier-Mars 2005, pp. 7-13.

HERVIEU-LEGER (D.), « Le Religion, Mode de Croire », *Revue du MAUSS*, n° 22, 2003/2, pp. 144-158.

HILAL-HARVALD (M.), « Islam as a Civilizational Threat: Constitutional Identity, Militant Democracy, and Judicial Review in Western Europe », *German Law Journal*, vol. 21, n° 6, September 2020, pp. 1228-1256.

HISPALIS (G.), « Pourquoi tant de Loi(s) ? », *Pouvoirs*, n° 114, 2005, pp. 101-115.

HJARVARD (S.), « The mediatization of religion: A theory of the media as agents of religious change », *Northern Lights: Film & Media Studies Yearbook*, Volume 6, Issue 1, 2008, pp. 9-26.

HJARVARD (S.), « The mediatisation of religion: Theorising religion, media and social change », *Culture and Religion*, 12:02, 2011, pp. 119-135.

HOCHMANN (T.), « Hans Kelsen et le Constitutionnalisme Global : Théorie Pure du Droit et Projet Politique », *Jus Politicum* [revue en ligne, accessible à cette adresse : http://juspoliticum.com/la-revue], Numéro 19 — Janvier 2018, pp. 25-39.

HOLC (J.), « Poland's European Vision: Religion, Secularism, and Poland's Role in the Emergence of the Lisbon Treaty », *The Polish Review*, Vol. 62, No. 1 (2017), pp. 93-110.

HRUBY (S.), « The Church in Poland and Its Political Influence », *Journal of International Affairs*, Vol. 36, No. 2, 1982/83, pp. 317-328.

HUNT (A.), « Rights and Social Movements: Counter-Hegemonic Strategies », *Journal of Law and Society*, Vol. 17, No. 3, 1990, pp. 309-328.

HUNT (S.), « Negotiating Equality in the Equality Act 2010 (United Kingdom): Church-State Relations in a Post-Christian Society », *Journal of Church and State*, vol. 55, no. 4, 2012, pp. 690-711.

HUNTINGTON (S. P.), « The Clash of Civilizations? », *Foreign Affairs*, vol. 72, no. 3, 1993, pp. 22-49.

HUNTINGTON (S. P.), « Try Again: A Reply to Russett, Oneal & Cox », *Journal of Peace Research*, vol. 37, no. 5, 2000, pp. 609-610.

HURTADO GALVES (J. M.), « Una revisión sobre el concepto de identidad del mexicano », *Amerika* [en ligne], Numéro 4 — 2011.

IANNACONE (L. R.), BROOKS (H.), « The Economics of Religion: A Survey of Recent Work », *Bulletin of the Association of Christian Economists*, Issue 18, Fall 1991, pp. 7-13.

IANNACONE (L. R.), FINKE (R.), STARK (R.), « Deregulating Religion: the Economics of Church and State », *Economic Inquiry*, Vol. XXXV, 1997, pp. 350-364.

IANNACONE (L. R.), « Introduction to the Economics of Religion », *Journal of Economic Literature*, Vol. 36, No. 3, 1998, pp. 1465-1495.

IN-SUK (C.), DELBAERE-GARANT (J.), « Subjectivité et Solidarité : une Renaissance de l'Humanisme », *Diogène*, Numéro 237 — 2012/1, pp. 28-36.

ISACS (L.), KENTER (J. O.), WETTERSTRAND (A.), KATZEFF (C.), « What does value pluralism mean in practice? An empirical demonstration from a deliberative valuation », *People and Nature*, 00, 2022, pp. 1-19.

IVALDI (G.), « Populism in France », *in* STOCKEMER (D.), *Populism Around the World. A Comparative Perspective*, Ottawa, Springer, 2018, 139 p.

IYER (R.), KOLEVA (S.), GRAHAM (J.), DITTO (P.), HAIDT (J.), « Understanding Libertarian Morality: The Psychological Dispositions of Self-Identified Libertarians », *PLOS One*, Volume 7 (Numéro 8) — Août 2012, pp. 1-23.

IYER (S.), « The New Economics of Religion », *Journal of Economic Literature*, Vol. 54, No. 2, 2016, pp. 395-441.

JACQUIER (C.), « Qu'est-ce qu'une Communauté ? En quoi cette notion peut-elle être utile aujourd'hui ? », *Vie Sociale*, 2011/2, n° 2, pp. 33-48.

JAMAL (A. A.), NEO (J. L.), « Religious Pluralism and the Challenge for Secularism », *Journal of Law, Religion and State*, 7, 2019, pp.1-12.

JAMIN (C.), « Saleilles' and Lambert's Old Dream Revisited », *The American Journal of Comparative Law*, Vol. 50, No. 4, 2002, pp. 701-718.

JANA (M.), COMAN (V. L.), « Regulations of Freedom of Conscience and Religion in International Documents », *AGORA International Journal of Juridical Sciences*, vol. 2011, n° 2, 2011, pp. 273-277.

JANKOWIAK (F.), « *Habemus Papam* : Histoire de l'Election Pontificale », *Pouvoirs*, n° 162(3), 2017, pp. 15-26.

JASIEWICZ (K.), « ‘The Past Is Never Dead’. Identity, Class, and Voting Behavior in Contemporary Poland », *East European Politics and Societies*, Vol. 23, Issue, 04, 2009, pp. 491-508.

JASPERSE (M.), WARD (C.), JOSE (P. E.), « Identity, Perceived Religious Discrimination, and Psychological Well-Being in Muslim Immigrant Women », *Applied Psychology: An International Review*, 2011, pp. 1-22.

JENSEN (L. A.), « The Cultural Psychology of Religiosity, Spirituality, and Secularism in Adolescence », *Adolescent Research Review*, 23 January 2021 [online].

JOHNSON (K. A.), HILL (E. D.), COHEN (A. D.), « Integrating the Study of Culture and Religion: Toward a Psychology of Worldview », *Social and Personality Psychology Compass*, 5/3, 2011, pp. 137-152.

JOUBERT (B.), « La Diplomatie du Saint-Siège », *Pouvoirs*, n° 162(3), 2017, pp. 47-61.

JOUBERT (B.), « La France et le Saint-Siège », *Outre-Terre*, 2015/4 (N° 45), pp. 183-190.

JOTTERAND (F.), « Human Dignity and Transhumanism: Do Anthro-Technological Devices Have Moral Status », *American Journal of Bioethics*, Volume 10, Number 7, July 2010, pp. 45-52.

JUNG (H.-Y.), KLEIN-LATAUD (C.), « Transversalité, Harmonie et Humanité entre Ciel et Terre », *Diogène*, Numéro 237 — 2012/1, pp. 138-148.

KACZMAREK-SLIWIŃSKA (M.), PIECHNIK-CZYZ (G.), JUPOWICZ-GINALSKA (A.), LEONOWICZ-BUKALA (I.), ADAMSKI (A.), « Social Media Marketing in Practice of Polish Nationwide Catholic Opinion-Forming Weeklies: Case of Instagram and YouTube », *Religions*, 13:19, 2021, pp. 1-27.

KÄSEHAGE (N.), « No Country for Muslims? The Invention of an Islam Républicain in France and Its Impact on French Muslims », *Religions*, 13, 2022, pp. 38-55.

KAUFMANN (L.), GONZALEZ (P.), « Mettre en valeur(s) le monde social », *Questions de Communication*, 32, 2017, pp. 167-194.

KAUL (V.), « Religion, rights and the public sphere », *Philosophy and Social Criticism*, Vol. 43(4-5), 2017, pp. 376-382.

KAYAOGLU (T.), « Trying Islam: Muslims before the European Court of Human Rights », Journal of Muslim Minority Affairs, Vol. 34, No. 4, 2014, pp. 345-364.

KERMELE (N.), « L’hétérodoxie indigène au coeur des conflits intrasociaux dans le Pérou colonial : perception et analyse de Bartolomé Álvarez, *doctrinero* de la fin du XVIème siècle », *Nuevo Mundo Mundos Nuevos* [revue en ligne ; article consulté le 27 février 2018 et accessible à l’adresse suivante : http://journals.openedition.org/nuevomundo/56562].

KHAITAN (T.), CALDERWOOD NORTON (J.), « The right to freedom of religion and the right against religious discrimination: Theoretical distinctions », *I•CON*, Vol. 17 No. 4, 2019, pp. 1125-1145.

KILLMISTER (S.), « Autonomy, Liberalism, and Anti-Perfectionism », *Res Publica*, 19, 2013, pp. 353–369.

KING (C.), « Faith Schools in Pluralistic Britain: Debate, Discussion, and Considerations », *Journal of Contemporary Religion*, 25:2, 2010, pp. 281-299.

KOENIG-ARCHIBUGI (M.), « Fuzzy Citizenship in Global Society », *The Journal of Political Philosophy*, Volume 20, Number 4, 2012, pp. 456-480.

KÖHRSEN (J.), « How religious is the public sphere? A critical stance on the debate about public religion and post-secularity », *Acta Sociologica*, 55(3), 2012, pp. 273-288.

KORBONSKI (A.), « The Decline and Rise of Pluralism in East Central Europe, 1949-1989, or How Not to See », *Communist and Post-Communist Studies*, Vol. 26, No. 4, December 1993, pp. 432-445.

KORTEWEG (A. C.), YURDAKUL (G.), « Liberal feminism and postcolonial difference: Debating headscarves in France, the Netherlands, and Germany », *Social Compass*, Vol. 68(3), 2021, pp. 410-429.

KOSKENNIEMI (M.), « Constitutionalism as Mindset: Reflections on Kantian Themes About International Law and Globalization », *Theoretical Inquiries in Law*, Vol. 8, 2006, pp. 9-36.

KOSKENNIEMI (M.), « Methodology of International Law », *Max Planck Encyclopedia of International Law*, November 2007.

KRZYZANOWSKI (N.), KRZYZANOWSKI (M.), « 'Crisis' and Migration in Poland », *Sociology*, Vol. 52, No. 3, June 2018, pp. 612-618.

KULSKA (J.), « Bridging the Nation and the State: Catholic Church in Poland as Political Actor », *Politics and Religion Journal*, Vol. 14, No 2, 2020, pp. 263-281.

KÜPPER (H.), « The Decisions of the European Court of Human Rights and their Implementation in Germany », *ICL Journal*, vol. 5, 2, 2011, pp. 200-210.

KURCZEWSKA (J.), « Pluralism 'Under Socialism': The Case of Poland », *Polish Sociological Review*, 1995, No. 112 (1995), pp. 325-339.

KUKATHAS (C.), « Are there any Cultural Rights », *Political Theory*, 1992, Vol. 20, No. 1, 1992, pp. 105-139.

KYMLICKA (W.), « Categorizing Groups, Categorizing States: Theorizing Minority Rights in a World of Deep Diversity », *Ethics & International Affairs*, Volume 23, Issue 4, 2010, pp. 371-388.

KYMLICKA (W.), « Liberal Multiculturalism as a Political Theory of State–Minority Relations », *Political Theory*, Vol. 46(1), 2018, pp. 81-91.

KYMLICKA (W.), « Liberalism, Community and Culture Twenty-Five Years on: Philosophical Inquiries and Political Claims », *Due Domovini • Two Homelands*, 44, 2016, pp. 67-76.

KYMLICKA (W.), « Multiculturalism and minority rights: West and East », *JEMIE — Journal on ethnopolitics and minority issues in Europe*, 4, 2002, pp. 1-24.

KYMLICKA (W.), « Nation-Building & Minority Rights: Comparing Africa and the West », *in* BERMAN (B.), *ed.*, EYOH (D.), *ed.*, KYMLICKA (W.), *ed.*, *Ethnicity and Democracy in Africa*, Rochester, Boydell & Brewer Ltd, 2004, pp. 54-80.

KYMLICKA (W.), « The Rights of Minority Cultures. Reply to Kukathas », *Political Theory*, Vol. 20, n° 1, 1992, pp. 140-146.

LADRIERE (J.), « Langage scientifique et langage spéculatif », *Revue Philosophique de Louvain*, Tome 69, n° 1, 1971, pp. 92-132.

LAJOINIE (T.), « Identité constitutionnelle et démocratie en Australie », *Pouvoirs*, n° 141, 2012, pp. 17-28.

LALANDER (R.), « El contexto histórico del Chavismo y los partidos políticos venezolanos de la izquierda », *Reflexión Política*, Nº19, 2008, pp. 36-48.

LAMCHICHI (A.), « Laïcité autoritaire en Tunisie et en Turquie », *Confluences Méditerranée*, n° 33, 2000, pp. 35-57.

LAMINE (A.-S.), « Mise en scène de la 'bonne entente' interreligieuse et reconnaissance », *Archives de sciences sociales des religions*, Numéro 129 — Janvier-Mars 2005, pp. 83-96.

LANDENNE (Q.), « Les fonctions systématiques de la *summa divisio* dans la philosophie du droit de Kant », *in* BAILLEUX (A.), *ed*., BERNARD (D.), *ed*., Van MEERBEECK (J.), *ed*., *Distinction (Droit) Public/(Droit) Privé. Brouillages, innovations et influences croisées*, Bruxelles, Presses de l'Université Saint-Louis, 2022, pp. 389-399.

LATUSEK (D.), RATAJCZAK (M.), « Crafting the idea of multiculturality. The case of Wrocław, European Capital of Culture 2016 », *Scandinavian Journal of Public Administration*, 18(3), 2014, pp. 49-66.

LAZAR (A.), « Cultural Influences on Religious Experience and Motivation », *Review of Religious Research*, Vol. 46, No. 1, 2004, pp. 64-71.

LLANO (F. H.), « Transhumanism, Vulnerability, and Human Dignity », *Deusto Journal of Human Rights*, n° 4, 2019, pp. 39-58.

LEBEN (C.), « L'argumentation chez les juristes et ses contraintes chez Perelman et les auteurs du courant rhétorico-herméneutique », *Droits*, Numéro 54 — 2011/2, pp. 49-80.

LE CLEZIO (J.-M. G.), « Une porte qui s'ouvre », *Diogène*, Numéro 237 — 2012/1, pp. 5-11.

LEIB (L. H.), « An Overview of the Characteristics and Controversies of Human Rights », *in* LEIB (L. H.), *Human Rights and the Environment. Philosophical, Theoretical and Legal Perspectives*, Leiden, Brill, 2010, 182 p.

LEUBA (J. H.), « Introduction to the Psychological Study of Religion », *The Monist*, Vol. 11, No. 2, January 1901, pp. 195-225.

LETTERON (R.), « Droit Européen de la Laïcité », *Commentaires*, n° 155, 2016/3, pp. 619-624.

LETTERON (R.), « Droit Européen et Laïcité : la diversité des modèles », *AJDA*, 2017, p. 1368.

LIEFBROER (A. I.), BERGHUIJS (J.), « Spiritual Care for Everyone? An Analysis of Personal and Organizational Differences in Perceptions of Religious Diversity among Spiritual Caregivers », *Journal of Health Care Chaplaincy*, 2019, 25:3, pp. 110-129.

LITTLE (D.), « Does the Human Right to Freedom of Conscience, Religion, and Belief Have Special Status? », *Birmingham Young University Law Review*, 2001, 603-610.

LECAROS (V.), « Les oxymores religieux latino-américains. Etude sur l'enchantement et les processus de sécularisation au Pérou », *Social Compass*, 2020, Vol. 67(3), pp. 444-460.

LEWIS (B.), « The Roots of Muslim Rage. Why so many Muslims deeply resent the West, and why their bitterness will not easily be modified », *The Atlantic*, 266(3), 1990, pp. 47-60.

LIOGIER (R.), « Identités globales et religion à l'ère digitale : vers les Global Identity Studies », *Social Compass*, 2020, Vol. 67(4), pp. 553-575.

LOOBUYCK (P.), « Liberal multiculturalism. A defence of liberal multicultural measures without minority rights », *Ethnicities*, Vol 5(1), pp. 108-135.

LU (Y), YANG (X. Y.), « The Two Faces of Diversity: The Relationships between Religious Polarization, Religious Fractionalization, and Self-rated Health », *Journal of Health and Social Behavior*, Vol. 61(1), 2020, pp. 79-95.

MAAMOURI (A.), « L'Australie, un *pelting pot* des théories de la séparation des pouvoirs », *Pouvoirs*, n° 141, 2012, pp. 28-38.

MACKLEM (P.), « Minority rights in international law », *International Journal of Constitutional Law*, Volume 6, Issue 3-4, July-October 2008, pp. 531–552.

MADDOX (M.), « Les dynamiques politiques en Australie : religion et politique dans un système laïque », *Pouvoirs*, n° 141, 2012, pp. 51-64.

MADONIA (S.), PLANET CONTRERAS (A. I.), « From the Mosque to the Town Square: Some Reflections on Islam, Youth, Social Movements, and Citizenship », *Religions*, 10, 2019, pp. 180-193.

MAHAN (J. F.), « Religion and Media », *Religion Compass*, 6/1, 2012, pp. 14-25.

MAÏA (J.), « La Contrainte Européenne sur la Loi », *Pouvoirs*, n° 114, 2005, pp. 53-71.

MAÏLA (J.), « Les droits de l'homme sont-ils « impensables » dans le monde arabe ? », *Esprit*, No. 172(6), 1991, pp. 322-342.

MALAURIE (P.), « L'Intelligibilité de la Loi », *Pouvoirs*, n° 114, 2005, pp. 131-137.

MALDAVSKY (A.), « De l'*encomendero* au marchand : charité et évangélisation dans le Pérou colonial, XVIe-XVIIe siècles », *Cahiers des Amériques latines*, Numéro 67 — 2011, pp. 75-87.

MALEWSKA-PEYRE (H.), « Réflexions sur les valeurs, l'identité et le processus de socialisation », *Droit et société*, n° 19, 1991, pp. 215-222.

MALINOWSKI (B.), « Culture as a Determinant of Behavior », *The Scientific Monthly*, Vol. 43, No. 5, 1936, pp. 440-449.

MALLIMACI (F.), ESQUIVEL (J. C.), « La tríada Estado, instituciones religiosas y sociedad civil en la Argentina contemporánea », *Amerika* [en ligne], Numéro 8 — 2013.

MALOVIĆ (N.), VUJICA (K.), « Multicultural Society as a Challenge for Coexistence in Europe », *Religions*, 12, 2021, pp. 615-631.

MALWE (C.), « La protection du droit de propriété par la Cour interaméricaine des droits de l'Homme », *Revue Trimestrielle des Droits de l'Homme*, Numéro 78 — 2009, pp. 569-605.

MANG (F. F), « Liberal Neutrality and Moderate Perfectionism », *Res Publica*, 19, 2013, pp. 297-315.

MANSOURI (F.), MODOOD (T.), « The complementarity of multiculturalism and interculturalism: theory backed by Australian evidence », *Ethnic and Racial Studies*, 44:16, 2021, pp. 1-20.

MARCOU (J.), « La laïcité en Turquie : une vieille idée moderne », *Confluences Méditerranée*, n° 33, 2000, pp. 59-71.

MARGEL (S.), « Philosophie de la religion. Remarques sur les illusions transcendantales du discours », *Archives de sciences sociales des religion*, n° 169, Janvier-Mars 2015, pp.123-142.

MARKOVITI (M.), « The ‘filtering effects’ of ECtHR case law on religious freedoms: legal recognition and places of worship for religious minorities in Greece », *Religion, State & Society*, 45:3-4, 2017, pp. 268-283.

MARTINÓN QUINTERO (R.), « El derecho a la libertad religiosa en los sistemas regionales de protección de derechos humanos de Europa y América », *Revista Iberoamericana de Filosofía, Política, Humanidades y Relaciones Internacionales*, Año 23, n° 46, 2021, pp. 591-612.

MAYRL (D.), « The Judicialization of Religious Freedom: An Institutionalist Approach », *Journal for the Scientific Study of Religion*, 57(3), 2018, pp. 514-530.

MAYRL (D.), VENNEY (D.), « The dejudicialization of religious freedom? », *Social Compass*, Vol. 68(3), 2021, pp. 342-358.

MATHIEU (B.), « La Part de la Loi, la Part du Règlement. De la Limitation de la Compétence Réglementaire à la Limitation de la Compétence Législative », *Pouvoirs*, n° 114, 2005, pp. 73-87.

MATHIEU (M.), « L’avortement en France : du droit formel aux limites concrètes à l’autonomie des femmes », *Droit et société*, 2022/2, N° 111, pp. 335-355.

MAULDIN (J. T.), « Law, Religion, and Society in China: a Contested Terrain », *Journal of Law and Religion*, 35 (no. 1) — 2020, pp. 102-112.

MAYBLIN (L.), VALENTINE (G.), WINIARSKA (A.), « Migration and diversity in a post-socialist context: Creating integrative encounters in Poland », *Environment and Planning*, Vol. 48(5), 2016, pp. 960–978.

McBRIDE (D. C.), BAILEY (K. G. D.), LANDLESS (P. N.), BALTAZAR (A. M.), TRIM (D. B. G.), STELE (G.), « Health Beliefs, Behavior, Spiritual Growth, and Salvation in a Global Population of Seventh-day Adventists », *Review of Religious Research*, March 06, 2021, pp. 1-23.

McCRAE (R.), « La Religion, la Loi et l’Etat dans l’Europe Contemporaine : Perspective Comparative des Principaux Dilemmes », *Politique américaine*, n° 23, 2014/1, pp. 73-90.

McLEAY (A.), POULOS (E.), RICHARDSON-SELF (L.), « The shifting Christian right discourse on religious freedom in Australia », *Politics and Religion*, 2023, pp. 1-22.

McQUILLAN (K.), GEHRMANN (R.), « The Impact of Religious Denomination on Mentality and Behavior. An Introduction », *Historical Social Research*, Vol. 42, No. 2 (160), 2017, pp. 7-22.

MECHOULAN (S.), « The case against the face-veil: A European perspective », *International Journal of Constitutional Law*, Volume 16, Issue 4, 2018, pp. 1267-1292.

MECLER (A.), « Les enjeux philosophique de la topique juridique selon Perelman », *Revue de Métaphysique et de Morale*, n° 2, 2010, pp. 195-212.

MEDDA-WINDISCHER (R.), « Militant or pluralist secularism? The European Court of Human Rights facing religious diversity », *Religion, State and Society*, 45:3-4, 2017, pp. 216-231.

MEDDA-WINDISCHER (R.), « The Contribution of the European Court of Human Rights to Contemporary Religious-Related Dilemmas », *European Yearbook of Minority Issues*, Vol. 9, 2010, pp. 453-496.

MEDINA (C.), « The Inter-American Commission of Human Rights and the Inter-American Court of Human Rights: Reflections on a Joint Venture », *Human Rights Quarterly*, vol. 12, n° 4, pp. 439-464.

MEHFOOZ (M.), « Religious Freedom in Pakistan: A Case Study of Religious Minorities », *Religions*, 12:51, 2021, 16 p.

MEILLET (A.), « Comment les Mots Changent de Sens », *L'Année Sociologique*, Tome 9, 1904-1905, pp. 1-38.

MELCHER (S. J.), « 'Genuine Pluralism' and Reformed Christology », *CrossCurrents*, Vol. 54, No. 4, WINTER 2005, pp. 6-17.

MELTON (J. G.), « Religious Pluralism: Problems and Prospects », *Birmingham Young University Law Review*, 2001, pp. 619-630.

MELUCCI (A.), « Société en changement et nouveaux mouvements sociaux », *Sociologie et sociétés*, Volume 10, Number 2, 1978, pp. 37-53.

MENDRAS (H.), « Homogénéisation ou diversification des systèmes de valeurs en Europe occidentale », *Revue de l'OFCE*, n° 71, 1999, pp. 299-311.

MENON (O.), « The Uncomfortable Balance between a Minority and a People », *International Journal on Minority and Group Rights*, Vol. 24, No. 3, 2017, pp. 254-272.

MERINO (S. R.), « Religious Diversity in a "Christian Nation": The Effects of Theological Exclusivity and Interreligious Contact on the Acceptance of Religious Diversity », *Journal for the Scientific Study of Religion*, 49(2), 2010, pp. 231-246.

MERRIL (R.), « Comment un État libéral peut-il être à la fois neutre et paternaliste ? », *Raisons politiques*, 2011/4 (n° 44), pp. 15-40.

MEYER (T.), « Le modèle de Traitement Heuristique Systématique de l'information : motivations multiples et régulation du jugement en cognition sociale », *L'année Psychologique*, vol. 100, n°3, 2000, pp. 527-563.

MICHALAK (R.), « History of Politilogy of Religion in Poland. A Research Overview », *Politics and Religion Journal*, Vol. 14, No 2, 2020, pp. 219-262.

MIGNOT (J. F.), « Decriminalizing Homosexuality: A Global Overview Since the 18th Century », *Annales de démographie historique*, 2022/1, n° 143, pp. 115-133.

MILOT (M.), « Introduction : les Amériques et la laïcité. Acquis historiques et enjeux actuels », *Archives de sciences sociales des religions*, Numéro 146 — avril-juin 2009, pp. 9-16.

MILOT (M.), « Laïcité au Canada. Liberté de conscience et exigence d'égalité », *Archives de sciences sociales des religions*, Numéro 146 — avril-juin 2009, pp. 61-80.

MODOOD (T.), « Multiculturalism, Interculturalisms and the Majority », *Journal of Moral Education*, 43:3, 2014, pp. 302-315.

MODOOD (T.), « The multiculturalist challenge: a rejoinder », Patterns of Prejudice, 55:2, 2021, pp. 141-146.

MODOOD (T.), THOMPSON (S.), « Othering, Alienation and Establishment », *Political Studies*, Vol. 70(3), 2022, pp. 780-796.

MOLINIÉ (G.), « Rhétorique et herméneutique », *Dix-septième siècle*, 2007/3, n° 236, pp. 433-444.

MONTGOMERY (J. W.), « The Capital of Human Rights », Human Rights, Vol. 9, No. 1, 1980, pp. 38-41.

MOOG (F.), « Le Vatican et les Eglises Locales », *Pouvoirs*, n° 162(3), 2017, pp. 127-138.

MORAWSKA (E.), « On Barriers to Pluralism in Pluralist Poland », *Slavic Review*, Vol. 47, No. 4, Winter 1988, pp. 627-641.

MORELLO SJ (G.), ROMERO (C.), RABBIA (H.), DA COSTA (N.), "An enchanted modernity: Making sense of Latin America's religious landscape," *Critical Research on Religion*, Vol. 5(3), 2017, pp. 308-326.

MORINI (C.), « Secularism And Freedom of Religion: The Approach of the European Court of Human Rights », *Israel Law Review*, vol. 43, 2010, pp. 611-630.

MOSQUERA (S.), « Reflexiones a partir del estudio de casos sobre libertad religiosa en el sistema interamericano de protección de los derechos humanos », *Persona y Derecho*, vol. 77, 2, 2017, pp. 335-351.

MOYN (S.), « From Communist to Muslim: European Human Rights, the Cold War, and Religious Liberty », *The South Atlantic Quarterly*, 113:1, Winter 2014, pp. 63-86.

MURRAY (S.), « L'avenir de l'Australie et de ses relations avec le Royaume-Uni : de la monarchie à la République ? », *Pouvoirs*, n° 141, 2012, pp. 91-102.

NADER (H.), « Droit naturel et histoire chez François Gény », *Clio@Themis*, 9, 2015.

NADI (S.), « L'islamophobie comme modalité idéologique des contradictions raciales en France », *French Cultural Studies*, Vol. 32(3), 2021, pp. 187-197.

NEO (J. L.); « Regulating Pluralism: Laws on Religious Harmony and Possibilities for Robust Pluralism in Singapore », *The Review of Faith & International Affairs*, 18:3, 2020, pp. 1-15.

NIEUWENHUIS (A.), « State and religion, a multidimensional relationship: Some comparative law remarks », *I•CON*, Vol. 10, No. 1, 2012, pp. 153-174.

NIEUWENHUIS (A.), « The Concept of Pluralism in the Case-Law of the European Court of Human Rights », *European Constitutional Law Review*, vol. 3, 2007, pp. 367–384.

NOILLE (C.), « La rhétorique est-elle une herméneutique ? », *Exercices de rhétorique*, 13, 2019.

NOJAN (S.), « Racial-Religious Decoupling in the University: Investigating Religious Students' Perceptions of Institutional Commitment to Diversity », *AERA Open*, Vol. 9, 2023, No. 1, pp. 1-18.

NOWLIN (C.), « The Protection of Morals under the European Convention for the Protection of Human Rights and Fundamental Freedoms », *Human Rights Quarterly*, 2002, Vol. 24, No. 1, pp. 264-286.

NOYON (L.), DE KREYSER (J. W.), CRIJNS (J. H.), « Legitimacy and public opinion: a five-step model », *International Journal of Law in Context*, 16, 2020, pp. 390-402.

ODGERS-ORTIZ (O.), CSORDAS (T.), BOJORQUEZ-CHAPELA (I.), OLIVAS-HERNANDEZ (O.), « Embodiment and somatic modes of attention in the evangelical care model in drug rehabilitation centers (Tijuana, Mexico) », *Social Compass*, Vol. 68(3), 2021, pp. 430-446.

OLIER (L.), « Présentation du dossier. La prise en charge de l'IVG en France : évolution du droit et réalités d'aujourd'hui », *Revue française des affaires sociales*, 2011/1, pp. 5-15

OLIPHANT (E.), « The crucifix as a symbol of secular Europe. The surprising semiotics of the European Court of Human Rights », *Anthropology Today*, Vol. 28, No 2, April 2012, pp. 10-12.

OYSERMAN (D.), « Values, Psychological Perspectives », *International Encyclopedia of the Social & Behavioral Sciences*, Second Edition, 2015, pp. 16150-16153.

OZGUL (C.), « Beyond legal victory or reform: the legal mobilisation of religious groups in the European Court of Human Rights », *Religion, State & Society*, 45:3-4, 2017, pp. 317-333.

OZÓG (M.), « Qualification of Freedom of Religious Assembly in the Period of Ordinary Functioning of the State and in the Legislation from the Time of COVID-19 Pandemic in Poland », *Białostockie Studia Prawnicze*, vol. 27, n° 2, 2022, 237-250.

PASIEKA (A.), « How Pluralism Becomes Hierarchical? Debating Pluralism in Contemporary Poland », *The Central European Journal for Science and Humanities*, 43, 2013, pp. 53-73.

PECH (R.), « Le modèle laïque français », *in* CABANEL (P.), *ed.*, BERTRAND (M.), *ed.*, *Religions, pouvoir et violence*, Toulouse, Presses universitaires du Midi, 2004, pp. 175-183.

PEI (S.), « Unveiling Inequality: Burqa Bans and Nondiscrimination Jurisprudence at European Court of Human Rights », *The Yale Law Journal*, 122(4), 2013, pp. 1089-1102.

PERONI (L.), « Religion and culture in the discourse of the European Court of Human Rights: the risks of stereotyping and naturalising », *International Journal of Law in Context*, 10(2), 2014, pp. 195–221.

PERRY (M. J.), « USA : Religion as a Basis of Lawmaking ? On the non-establishment of Religion », *Archives de sciences sociales des religions*, Numéro 146 — avril-juin 2009, pp. 119-136.

PERRY (R. B.), « The Definition of Value », *The Journal of Philosophy, Psychology and Scientific Methods*, Vol. 11, No. 6, 1914, pp. 141-162.

PETERS (A.), « Le Constitutionnalisme Global : Crise ou Consolidation ? », *Jus Politicum* [revue en ligne, accessible à cette adresse : http://juspoliticum.com/la-revue], Numéro 19 — Janvier 2018, pp. 59-70.

PETROSKI (K.), « Legal fictions and the limits of legal language », *International Journal of Law in Context*, 9(4), 2013, pp. 485-505.

PIN (A.), « Religions, National Identities, and the Universality of Human Rights », *Oxford Journal of Law and Religion*, Vol. 3, No 3, 2014, pp. 419-439.

PINTO (T. A.), « An Empirical Investigation of the Use of Limitations to Freedom of Religion or Belief at the European Court of Human Rights », *Religion and Human Rights,* 15 (2020), pp. 96–133.

PIQUET (M.), « La multiculturalisme australien », *Pouvoirs*, n° 141, 2012, pp. 65-76.

PIWOWARSKI (W.), « Cultural Pluralism In Socialist Societies: The Case of Poland », *An Interdisciplinary Journal*, Summer 1984, Vol. 67, No. 2, pp. 183-190.

PINI (J.-T.), « La 'Droit du Vatican' : de la Loi de la Pesanteur dans l'Univers Juridique », *Pouvoirs*, n° 162(3), 2017, pp. 89-103.

PODOLECKA (A.), « New Age: Religion, a Religion or Secular Religion? », *Rocznik Orientalistyczny*, T. LXX, Z. 1, 2017, pp. 160–170.

POLLACK (E. H.), « What are human rights? », *in* Pollack (E. H.), *dir*, *Human Rights: Initial Publication of the American Section of the International Association for the Philosophy of Law and Social Philosophy*, 1971.

PONS (X.), « La culture australienne. Entre Occident et Orient », *Pouvoirs*, n° 141, 2012, pp. 133-146.

PONTHOREAU (M.-C.), « 'Global Constitutionnalism', un discours global homogénéisant. L'apport du comparatisme critique », *Jus Politicum* [revue en ligne, accessible à cette adresse : http://juspoliticum.com/la-revue], Numéro 19 — Janvier 2018, pp. 59-70.

POPA (M.), ANDRESCU (L.), « Legal provisions, courts, and the status of religious communities: a socio-legal analysis of inter-religious relations in Romania », *Religion, State & Society*, 45:3-4, 2017, pp. 297-316.

PORTELLI (H.), « Le Pouvoir du Pape et ses Limites », *Pouvoirs*, n° 162(3), 2017, pp. 27-34.

PORTIER (P.), « L'Amérique et la France face à "l'esprit de religion". Retour sur une comparaison tocquevillienne », *Social Compass*, 57(2), 2010, pp. 180-193.

PORTIER (P.), « L'Église catholique face au modèle français de laïcité », *Archives de sciences sociales des religions*, Numéro 129 — Janvier-Mars 2005, pp. 117-134.

PORTIER (P.), « L'Épiscopat Français et la Loi de Séparation. Retour sur un processus de reconnaissance », *in* Patrick Weil, *Politiques de la Laïcité au XXème Siècle*, 2007, pp. 203-236.

PORTIER (P.), « L'Inclination Identitaire de la Laïcité Française. Retour sur une Controverse (1988-2018) », *Vie Sociale*, Numéro 21 — 2018/1, pp. 35-44.

PORTIER (P.), « Philosophie, Politique, Religion. Exploration des Paradigmes Contemporains », *Archives de sciences sociales des religions*, Numéro 169 — Janvier-Mars 2015, pp. 263-284.

PORTIER (P.), « Retour sur la 'Laïcité Positive' de Nicolas Sarkozy. Néocléricalisme ou Ultramodernité ? », *Esprit*, 2008/5, pp. 196-198.

PORTMANN (A.), PLÜSS (D.), « Good Religion or Bad Religion: Distanced Church-members and their Perception of Religion and Religious Plurality », *Journal of Empirical Theology*, 24, 2011, pp. 180-196.

POSSAMAI (A.), « Cultural Consumption of History and Popular Culture in Alternative Spiritualities », *Journal of Consumer Culture*, Vol 2(2), 2002, pp. 197-218.

POSSAMAI (A.), « La Mondialisation, l'i-zation de la Société et le COVID-19 », *Diogène*, n° 271-272, 2020/3, pp. 191-104.

POSSAMAI (A.), OPENSHAW (K.), KHOSRONEJAD (P.), RASHEED (A.), MUBASHAR (A.), « Ramadan: devotion, compassion, and purification in Sydney », *Contemporary Islam*, 16, 2022, pp. 193-207.

POSSAMAI (A.), « Popular and lived religions », *Current Sociology Review*, 2015, Vol. 63(6), pp. 781-799.

POSSAMAI (A.), TURNER (B. S.), ROOSE (J.), DAGISTANLI (S.), VOYCE (M.), « Defining the conversation about Shari'a: Representations in Australian newspapers », *Current Sociology*, 2013, pp. 626-645.

POSSAMAI (A.), POSSAMAI-INESEDY (A.), « Freedom of Religion in post-secular Australia », *Social Compass*, 2021, Vol. 68(3), pp. 359-374.

POSSAMAI (A.), TURNER (B. S.), « Authority and liquid religion in cyber-space: the new territories of religious communication », *International Social Science Journal*, Volume 63, Issue 209-210, 2014, pp. 197-206.

POTTER (P. B.), « Belief in Control: Regulation of Religion in China », *The China Quarterly*, No 174 — June 2003, pp. 317-337.

POULOS (E.), « Constructing the Problem of Religious Freedom: An Analysis of Australian Government Inquiries into Religious Freedom », *Religions*, 10, 583.

POULOS (E.), « Three Discourses of Religious Freedom: How and Why Political Talk about Religious Freedom in Australia Has Changed », *Religions*, 14, 669.

POUND (R.), « Sociology of Law and Sociological Jurisprudence », *The University of Toronto Law Journal*, 1943, Vol. 5, No. 1 (1943), pp. 1-20.

POUND (R.), « The Scope and Purpose of Sociological Jurisprudence. I. Schools of Jurists and Methods of Jurisprudence », *Harvard Law Review*, Vol. 24, No. 8, 1911, pp. 591-619.

POUND (R.), « The Scope and Purpose of Sociological Jurisprudence [Continued] », *Harvard Law Review*, Vol. 25, No. 2, 1911, pp. 140-168.

POUND (R.), « The Scope and Purpose of Sociological Jurisprudence. [Concluded.] III. Sociological Jurisprudence », *Harvard Law Review*, Vol. 25, No. 6, 1912, pp. 489-516.

POUTHIER (J.-L.), « Saint Siège et Etat dans la Cité du Vatican. Histoire et Présent », *Pouvoirs*, n° 162(3), 2017, pp. 5-14.

PREECE (J. J.), « Minority Rights in Europe: From Westphalia to Helsinki », *Review of International Studies*, Vol. 23, No. 1, 1997, pp. 75-92.

PREECE (J. J.), « National minority rights vs. state sovereignty in Europe: changing norms in international relations? », Nations and Nationalism, 3(3), 1997, pp. 345-364.

PROULX (S.), « Une lecture de l'œuvre de Michel de Certeau : L'invention du quotidien, paradigme de l'activité des usagers », *Communication. Information Médias Théories*, volume 15, n° 2, 1994, pp. 170-197.

PUJOL (H.), « La christianisation de la Nouvelle-Espagne ou le rêve d'une église indienne : la praxis de l'évangélisation », *Cahiers d'étude du religieux. Recherches interdisciplinaires* [online], Numéro 10, 2012, 26 January 2012.

PUJOL (H.), « La christianisation de la Nouvelle-Espagne ou le rêve d'une église indienne : les agents de l'évangélisation », *Cahiers d'étude du religieux. Recherches interdisciplinaires* [online], Numéro 10, 2012, 26 January 2012.

RAJAGOPAL (B.), « Counter-Hegemonic International Law: Rethinking Human Rights and Development as a Third World Strategy », *Third World Quarterly*, Vol. 27, No. 5, 2006, pp. 767-783.

RAMIREZ CALZADILLA (J.), « Laïcité, liberté de religion, État laïque. Les étapes de la laïcisation cubaine », *Archives de sciences sociales des religions*, 146, 2009, pp. 157-182.

RANCIERE (J.), « Who is the Subject of the Rights of Man », *The South Atlantic Quarterly*, 103:2/3, Spring/Summer 2004, pp. 297-310.

RATAJCZAK (M.), JĘDRZEJCZYK-KULINIAK (K.), « Muslims and Refugees in the Media in Poland », *Global Media Journal*, Vol. 6, No.1, 2016, pp. 1-17.

RATAJCZAK (M.), « Multi-cultural Switzerland — multicultural public service media? », *Przegląd Politologiczny*, 3? 2014, pp. 7-18.

RATAJCZAK (M.), « Representation and Visibility. Roma in the Media », *Global Media Journal*, Vol. 1, No.2, 2011, pp. 1-17.

RATAJCZAK (M.), « The media image of “solidarity” in the crisis », *Media Biznes Kultura*, Vol. 2(11), 2021, pp. 125-140.

RAWLS (J.), « Two Concept of Rules », *The Philosophical Review*, Vol. 64, No. 1, 1955, pp. 3-32.

REED (H. A.), « Islam and Education in Turkey: Their Roles in National Development », *Turkish Studies Association Bulletin*, Vol. 12, No. 1, 1988, pp. 1-5.

REGIS (N.), « Juger, est-ce interpréter ? », *Cahiers philosophiques*, 2016/4, n° 147, pp. 26-47.

REHAK (J.), « European Values Study: Information about the EVS project », *Czech Sociological Review*, Vol. 9, No. 1, 2001, pp. 9-11.

RELAÑO (E.), « Educational pluralism and freedom of religion: recent decisions of the European Court of Human Rights », *British Journal of Religious Education*, vol. 32, Issue1, 2010, pp. 19-29.

REMOND (R.), « La laïcité et ses contraires », *Pouvoirs*, Numéro 75 — 1995, pp. 7-16.

REY (J. F.), « Qui est l’Homme des Droits de l’Homme ? Quelques Réflexions sur l’Education Civique », *Spirale; Revue de Recherche en Education*, N° 7 — 1992, pp. 65-71.

RICHARDSON (J. T.), « ‘Brainwashing’ Claims and Minority Religions Outside the United States: Cultural Diffusion of a Questionable Concept in the Legal Arena », *BYU Law Review*, Volume 1996 — Issue 4, 1996, pp. 873-904.

RICHARDSON (J. T.), LEE (B. M.) « The Role of the Courts in the Construction of Religious Freedom in Central and Eastern Europe », *Review of Central and European Law*, 39(3), 2014, pp. 291-313.

RICHARDSON (J. T.), « Managing Religion and the Judicialization of Religious Freedom », *Journal for the Scientific Study of Religion*, 54(1), 2015, pp. 1-19.

RICHARDSON (J. T.), « Religious Freedom in Flux: The European Court of Human Rights Grapples with Ethnic, Cultural, Religious, and Legal Pluralism », *Changing Societies and Personalities*, Vol. 3, N° 4, 2019, pp. 303-318.

RICHARDSON (J. T.), « The judicialization of religious freedom: Variations on a theme », *Social Compass*, Vol. 68(3), 2021, pp. 375–391.

RICHARDSON (J. T.), « The Social Construction of Legal Pluralism », *Democracy and Security*, 7:4, 2011, pp. 390-405.

RICHARDSON (J. T.), « The Sociology of Religious Freedom: a Structural and Socio-Legal Analysis », *Sociology of Religions*, 67(3), 2006, pp. 271-294.

RICHARDSON (J. T.), THOMAS (R. M.), « Parental Alienation Syndrome. 30 Years On and Still Junk Science », *The Judges’ Journal*, Volume 54 — Number 3, Summer 2015, pp. 22-24.

RICHARDSON (J. T.), « Update on Jehovah’s Witness cases before the European Court of Human Rights: implications of a surprising partnership », *Religion, State & Society*, Vol. 45, Nos 3-4, 2017, pp. 232-248.

RICHMAN (B. D.), « Religious Freedom Through Market Freedom: The Sherman Act and the Marketplace for Religion », *William & Mary Law Review*, Volume 60 (2018-2019), Issue 4, pp. 523-1543.

RIEU (A.-M.), « La nature de Jean-Jacques Rousseau », *Revue de Métaphysique et de Morale*, 85e Année, No. 4, 1980, pp. 438-451.

RINGELHEIM (J.), « State Religious Neutrality as a Common European Standard? Reappraising the European Court of Human Rights Approach », *Oxford Journal of Law and Religion*, vol. 6, 2017, pp. 24–47.

RIVA (V.), « Pédophilie, Finances, Affaires 'Vatileaks' : la Fin du Secret Au Vatican ? », *Pouvoirs*, n° 162(3), 2017, pp. 75-87.

ROCA (M. J.), « Impacto de la jurisprudencia del TEDH y la Corte IDH sobre libertad religiosa », *Revista Española de Derecho Constitucional*, 110, 2017, pp. 253-281

ROCCAS (S.), « Religion and Value Systems », *Journal of Social Issues*, Vol. 61, No. 4, 2005, pp. 747-759.

ROCHA (C.), DE CASTRO (C. M.), « Perspectives nouvelles autour de la mondialisation du champ religieux brésilien - New perspectives on the globalization of the Brazilian religious field », *Social Compass*, 2021, Vol. 68(2), pp. 151-175.

RODRIGO (M. A.), HERNANDEZ MARTÍ (G. M.), « Los movimientos psico-espirituales en la modernidad globalizada. Una mirada desde la ciudad de Valencia », *Revista de Antropología Iberoamericana*, Septiembre—Diciembre 2014, pp. 273-296.

ROE (P.), « Reconstructing Identities or Managing Minorities? Desecuritizing Minority Rights: A Response to Jutila », *Security Dialogue*, Vol. 37(3), 2006, pp. 425-438.

ROKEACH (M.), « Part I. Value Systems in Religion », *Review of Religious Research*, 1969, Vol. 11, No. 1, 1969, pp. 3-23.

ROLLAND (P.), « Qu'est-ce qu'un culte aux yeux de la République ? », *Archives de sciences sociales des religions*, Numéro 129 — Janvier-Mars 2005, pp. 51-63.

ROLLAND (P.), « La loi de 1905 à l'épreuve des sectes », *Études Théologiques et Religieuses*, 2007/1, Tome 82, pp. 91-101.

ROMERO PEREZ (X. L.), « La libertad religiosa en el Sistema Interamericano de Protección de los Derechos Humanos (Análisis comparativo con el ordenamiento jurídico colombiano) », *Revista Derecho del Estado*, n° 29, 2012, pp. 215-232.

ROTER (P.), « Locating the 'Minority Problem' in Europe: A Historical Perspective », *Journal of International Relations and Development*, Volume 4 (3) — September 2001, pp. 221-249.

ROTER (P.), « Managing the 'Minority Problem' in Post-Cold War Europe Within the Framework of a Multilayered Regime for the Protection of National Minorities », *European Yearbook of Minority Issues*, Volume 1 — 2001/2, pp. 85-129.

RÜEGGER (M.), « Libéralisme, immigration et culture », *Raisons politiques*, 2007/2 (n° 26), pp. 101-123.

RUIZ MIGUEL (A.), « Laicidad, religiones e igualdad », *Anuario de la Facultad de Derecho de la Universidad Autónoma de Madrid*, n° 13 — 2009, pp. 217-224.

SAID (E. W.), « Orientalism Reconsidered », *Cultural Critique*, No. 1, 1985, pp. 89-107.

SAGESSER (C.), « Les droits de l'homme », *Dossiers du CRISP*, 2009/2, N° 73, pp. 9-96

SALEILLES (R.), « Droit civil et droit comparé », *Revue internationale de l'enseignement*, Tome 61, 1911, pp. 5-32.

SALEILLES (R.), « Ecole Historique et Droit Naturel », *Revue Trimestrielle de Droit Civil*, 1902, pp. 80-112.

SALEILLES (R.), « Étude sur l'exposé fait par M. Maurice Hauriou des principes de la loi du 9 décembre 1905 sur la séparation des Églises », *Revue Trimestrielle de Droit Civil*, 1906, pp. 847-874.

SALEILLES (R.), « Quelques mots sur le rôle de la méthode historique dans l'enseignement du droit », *Revue internationale de l'enseignement*, Tome 19, 1890, pp. 482-503.

SANCHEZ-CASCADO, « El daño al proyecto de vida en la Corte Interamericana de Derechos Humanos a la luz del pensamiento político de J. Shklar », *Andamios*, Volumen 17, número 42, 2020, pp. 147-166.

SAMSON (M. G. M.), VENDERBECK (R. M.), WOOD (N.), « Fixity and flux: A critique of competing approaches to researching contemporary Jewish identities », *Social Compass*, Vol. 65(1), 2021, pp. 97-113.

SAPIR (E.), « Language and Environment », *American Anthropologist*, Vol. 14, No. 2, 1912, pp. 226-242.

SARDAR (Z.), SERRA (J.), JORDAN (S.), « Islamophobia and the Rise of the Alt-Right », *in* SARDAR (Z.), SERRA (J.), JORDAN (S.), *Muslim Societies in Postnormal Times*, United Kingdom, International Institute of Islamic Thought, 2019, pp. 87-92.

SATHA-ANAND (S.), ALBERT (N. G.), « La 'Genèse' Bouddhiste comme Récit de la Transformation du Conflit : Relire l'Agganna-Sutta », *Diogène*, Numéro 237 — 2012/1, pp. 75-85.

SAWYER (S.), NOVAK (W. J.), « Emancipation and the Creation of Modern Liberal States in America and France », *Journal of the Civil War Era*, Vol. 3, No. 4, 2013, pp. 467-500.

SAUNDERS (C.), « Le fédéralisme australien et l'autonomie locale », *Pouvoirs*, n° 141, 2012, pp. 39-50.

SCARAFFIA (L.), « Les Femmes au (et le) Vatican », *Pouvoirs*, n° 162(3), 2017, pp. 105-114.

SCOFFONI (G.), « Les libertés, le juge et la conception australienne de l'Etat de droit », *Pouvoirs*, n° 141, 2012, pp. 77-90.

SCHAUER (F.), « Positivism Before Hart », *in* FREEMAN (M.), *ed.*, MINDUS (P.), *ed.*, *The Legacy of John Austin's Jurisprudence*, Dordrecht, Springer, 2013, 316 p.

SCHAEFER (D. O.), « Blessed, precious mistakes: deconstruction, evolution, and New Atheism in America », *Int J Philos Relig*, 76, 2014, pp. 75-94.

SCHLEGEL (J.-L.), « Le travail de la Laïcité », *Archives de sciences sociales des religions*, Numéro 146 — avril-juin 2009, pp. 219-235.

SCHUBERT (L. K.), « Harmonizing Particularity of Religions and Universality of Human Rights: Critique of Traditional 'Top-Down' Approach and Proposed Alternatives », *Religion and Human Rights*, n° 4 — 2009, pp. 25-40.

SCHWARTZ (S. H.), « Les Valeurs de Base de la Personne : Théorie, Mesures et Applications », *Revue Française de Sociologie*, 2006/4, Vol. 47, pp. 929-968.

SEALY (T.), MODOOD (T.), « Western Europe and Australia: negotiating freedoms of religion », *Religion, State & Society*, 50:4, pp. 378-395.

SELVAM (S. G.), « Towards a Religious-Spirituality: A Multidimensional Matrix of Religion and Spirituality », *Journal for the Study of Religions and Ideologies*, vol. 12, Issue 36, Winter 2013, pp. 129-152.

SENEZE (N.), « Le Trésor du Vatican », *Pouvoirs*, n° 162(3), 2017, pp. 63-73.

SESSAREGO (C. F.), « El daño al «proyecto de vida» en la jurisprudencia de la Corte lnteramericana de Derechos Humanos », *Derecho PUCP*, N° 56, 2003, pp. 659-700.

SHAW (R.), « La nouvelle gestion publique en Australie : passé, présent et futur », *Pouvoirs*, n° 141, 2012, pp. 117-132.

SIMMONS (B. A.), « Why International Law? The development of the Human Rights Regime in the Twentieth Century », *in Mobilizing for Human Rights, International Law in Domestic Politics*, Cambridge: Cambridge University Press, 2009, pp. 23-56.

SINHA (V.), « Theorising 'Talk' about 'Religious Pluralism' and 'Religious Harmony' in Singapore », *Journal of Contemporary Religion*, 20:1, 2005, pp. 25-40.

SIRACUSA (J.), « Quelques usages du terme 'tendance' en sociologie », *Revue européenne des sciences sociales*, 55-2, 2017, pp. 211-235.

SKEET, (C. H.), « Orientalism in the European Court of Human Rights », *Religion and Human Rights*, 14 (1), 2019, pp. 31-63.

SMOLICZ (J. J.), « Core Values and Nation States », *in* WEI (L), *ed.*, DEWAELE (J. M.), *ed.*, HOUSEN (A.), *ed.*, Berlin, De Gruyter, 2002, 346 p.

SOLARZ (A. M.), « The Impact of Immigration Crisis on Europe's Cultural Condition: Why are the Poles 'Apprehensive' about Muslims », *Politics and Religion Journal*, Vol. 14, No 2, 2020, pp. 313-335.

SOLWAY (J. S.), « Navigating the 'Neutral' State: 'Minority' Rights in Botswana », *Journal of Southern African Studies*, Vol. 28, No. 4, 2002, pp. 711-729.

SOULAS DE RUSSEL (D.), RAIMBAULT (P.), « Nature et racines du principe de sécurité juridique : une mise au point », *Revue internationale de droit comparé*, Vol. 55, N°1, 2003, pp. 85-103.

SOUTPHOMMASANE (T.), « Grounding Multicultural Citizenship: From Minority Rights to Civic Pluralism », *Journal of Intercultural Studies*, 26:4, 2005, pp. 401-416.

SOUVIGNET (X.), « Prosélytisme et Cour Européenne des Droits de l'Homme : Prosélytisme de la Cour Européenne des Droits de l'Homme ? », *Société, droit et religion*, n° 7, 2017/1, pp. 53-70.

SPADARO (I.), « Tendances récentes du modèle italien de laïcité de l'Etat », *Revue du droit des religions*, vol. 14, 2022, pp. 71-85.

SPENCER (A.), « Does Freedom of Religion Imply Freedom of Religious Trade », *James Cook University Law Review*, 22, 2016, pp. 81-118.

SPITZ (J.-F.), « Le Concept d'état de Nature chez Locke et chez Pufendorf: Remarques sur le rapport entre épistémologie et philosophie morale au XVIIe siècle », *Archives de Philosophie*, Vol. 49, No. 3, 1986, pp. 437-452.

SPULER (M.), « Characteristics of Buddhism in Australia », *Journal of Contemporary Religion*, Vol. 15, No. 1, 2000, pp. 29-44.

STĘPIEŃ (K.), « Freedom and Religion: A Realistic Correlation », *Studiana Gilsoniana*, Vol. 10 — n° 1, January-March 2021, pp. 181-205.

STIVACHTIS (Y. A.), HABEGGER (M.), « The Council of Europe: The Institutional Limits of Contemporary European International Society? », *European Integration*, 33:2, 2011, pp. 159-177.

STREIB (H.), HOOD (R. W.), « Modeling the Religious Field: Religion, Spirituality, Mysticism, and Related World Views », *Implicit Religion*, 16.2, 2013, pp. 137-155.

STREIB (H.), « Inter-Religious Negotiations: Case Studies on Students' Perception of and Dealing with Religious Diversity », *in* HEIMBROCK (H.-G.), *ed*., SCHEILKE (C.), *ed*., SCHREINER (P.), *ed*., *Towards Religious Competence. Diversity as a Challenge for Education in Europe*, Münster: Lit Verlag, 2001, 291 p.

STJERNFELT (F.), « Liberal Multiculturalism as Political Philosophy: Will Kymlicka », *The Monist*, Volume 95 (n° 1) — January 2012, pp. 49-71.

STROOPE (S.), « Social Networks and Religion: The Role of Congregational Social Embeddedness in Religious Belief and Practice », *Sociology of Religion*, 2012, 73:3, pp. 273-298.

SUBRAMANIYAN (J.), AJITHKUMAR (S.), « Secularism and Human Rights in India–A Study », R*esearch Journal of Language, Literature and Humanities*, April 2014, Vol. 1 (3), pp. 1-4.

SUNSHINE (J.), TYLER (T. R.), « The Role of Procedural Justice and Legitimacy in Shaping Public Support for Policing », *Law & Society Review*, Vol. 37, No. 3, 2003, pp. 513-548.

SUTERA (S.), « Sexual Exploitation and Abuse in Peacekeeping: Making Human Rights Obligations Universal », *Peace and Human Rights Governance Journal*, 4 (2), 2020, pp. 161-188.

SZELEWA (D.), « Populism, Religion and Catholic Civil Society in Poland: The Case of Primary Education », *Social Policy & Society*, 20:2, 2021, pp. 310-325.

TAILLON (P.), « La *Loi sur la laïcité de l'Etat*. La formalisation d'un compromis politique québécois », *Revue du droit des religions*, vol. 14, 2022, pp. 35-55.

TAIRA (T.), « Atheist spirituality: a follow on from New Atheism? », *Scripta Instituti Donneriani Aboensis*, 24, 2012, pp. 388-404.

TAMANAHA (B. Z.), « Sociological Jurisprudence Past and Present », *Law & Social Inquiry*, Volume 45, Issue 2, 2020, pp. 493-520.

TAPIA (C.), « Modernité, Postmodernité, Hypermodernité », *Connexions*, 2012/1, No. 97, pp. 15-25.

TARAMUNDI (D. M.), « Legal Pluralism and Reasonable Accommodation of Religious Diversity », *International Journal on Minority and Group Rights*, Vol. 24, No. 4, 2017, pp. 467-483.

TATE (E. D.), MILLER (G. R.), « Differences in Value Systems of Persons with Varying Religious Orientations », *Journal for the Scientific Study of Religion*, Vol. 10, No. 4, 1971, pp. 357-365.

TASIOULAS (J.), « Towards a Philosophy of Human Rights », *Current Legal Problems*, Vol. 65 — 2012, pp. 1-30.

TERELAK (J. F.), « Psychology and Religion. Remarks from a Methodological Perspective », *ScientiaetFides*, 9(1), 2021, pp. 357-382.

THALMANN (R.), DHOQUOIS (R.), « La lutte pour le droit à l'IVG », *Les cahiers du CEDREF*, 4-5, 1995, pp. 97-102.

THIÉRAULT (B.), « Le sociologue, l'homme pieux et le pluralisme religieux. Dialogue avec Max Weber », *Social Compass*, 57(2), 2010, pp. 206-216.

THOMAS (M. D.), « The Limits of Pluralism », *The Phi Delta Kappan*, Vol. 62, No. 8, Apr. 1981, pp. 589-592.

TIGROUDJA (H.), « L'autonomie du Droit applicable par la Cour interaméricaine des droits de l'Homme : en marge d'arrêts et avis consultatifs récents », *Revue Trimestrielle des Droits de l'Homme*, Numéro 49 — 2002, pp. 69-110.

TODOROV (T.), ANZALONE (J.), « European Values », *Salmagundi*, No. 148/149, 2005—2006, pp. 16-22.

TOPIDI (K.), « Religious Freedom, National Identity, and the Polish Catholic Church: Converging Visions of Nation and God », *Religions*, 10(5), 2019, pp. 293-312.

TORRES GUTIERREZ (A.), « Desde la *Dignitatis Humanae* hasta hoy en España: la transformación de un Estado confesional en otro laico », *Diacronie — Studi di Storia Contemporanea*, N° 26 (2) — 2016, documento 6.

TORRES MARTINEZ (R.), « Laïcité, anticléricalisme et sécularisation. trois concepts à débattre au sein du continent latino-américain », *Amerika* [online], 26, 2023.

TRINDADE (A. A. C.), *International Law for Humankind*, Leiden, Martinus Nijhoff Publishers, Vol. 316, 2006, 439 p.

TRINDADE (A. A. C.), *International Law for Humankind*, Leiden, Martinus Nijhoff Publishers, Vol. 317, 2006, 312 p.

TRZEBIATOWSKA (M.), « Presuming religious congruence? The nonreligious and Catholicism in Poland », *Social Compass*, Vol. 68(4), pp. 653–670.

TSEVAS (C.), « Human rights and religions: 'living together' or dying apart? A critical assessment of the dissenting opinion in *S.A.S. v. France* and the notion of 'living together' », *Religion, State and Society*, Vol. 45, Nos. 3–4, 2017, pp. 203–215.

TSHCANNEN (O.), « L'individu comme croyant », *Social Compass*, 57(2), 2010, pp. 285-297.

TULKENS (F.), « La sécurité juridique : un idéal à reconsidérer », *Revue interdisciplinaire d'études juridiques*, 1990/1, 24, pp. 25-42.

TULKENS (F.), « The European Convention on Human Rights and Church-State Relations. Pluralism vs. Pluralism », *Stato, Chiese e pluralismo confessionale*, 2011:28, pp. 1-20.

TURNER (B. S.), « Orientalism, Islam and Capitalism », *Social Compass*, XXV, 1978/3-4, pp. 371-394.

TURNER (B. S.), « Religion and contemporary sociological theories », *Current Sociology Review*, Vol. 62(6), 2014, pp. 771-788.

TURNER (B. S.), « Une interprétation des représentations occidentales de l'Islam », *Social Compass*, XXXI/1, 1984, pp. 91-104.

TURNER (K.), « Convertitis and the Struggle with Liminality for Female Converts to Islam in Australia », *Archives de sciences sociales des religions*, 186, 2019, pp. 71-91.

TURSKA-KAWA (A.), WOJTASIK (W.), « The Importance of Religiosity in the Formation of Populist Attitudes: the Case of Poland », *Journal for the Study of Religions and Ideologies*, vol. 19, Issue 55, 2020, pp. 34-52.

TYRAŁA (R.), « Living without God in a religious country: Polish nonbelievers as a cultural minority », *Social Compass*, Vol. 65(1), 2021, pp. 131-144.

UCHANG (K.), KLEIN-LATAUD (C.), « Ethique Universelle et Mondialisation », *Diogène*, Numéro 237 — 2012/1, pp. 52-74.

VALASIK (C.), « Le social et l'éthique comme réponses de la religion face au pluralisme religieux », *Social Compass*, 57(2), 2010, pp. 168-179.

VANBELLINGEN (L.), « Laïcité 'à la belge' : vers une neutralité intrinsèquement plurielle », *Revue du droit des religions*, vol. 14, 2022, pp. 57-70.

Van Der BURG (W.), « The Expressive and Communicative Functions of Law, Especially With Regard to Moral Issues », *Law and Philosophy*, Vol. 20, n° 1, 2001, pp. 31-59.

Van Der NOLL (J.), ROHMANN (A.), SAROGLOU (V.), « Societal Level of Religiosity and Religious Identity Expression in Europe », *Journal of Cross-Cultural Psychology*, Vol. 49(6), 2018, pp. 959-975.

Van MEERBEECK (J.), LEONARD (T.), « Le droit subjectif: le noeud gordien de la distinction entre droit public et droit privé ? », *in* BAILLEUX (A.), *ed*., BERNARD (D.), *ed*., Van MEERBEECK (J.), *ed*., *Distinction (Droit) Public/(Droit) Privé. Brouillages, innovations et influences croisées*, Bruxelles, Presses de l'Université Saint-Louis, 2022, pp. 321-365.

Van NIEKERK (B.), « Religion and spirituality: What are the fundamental differences? », *HTS Teologiese Studies/Theological Studies*, 74(3), 2018, pp. 1-11.

Van NIEUWKERK (K.), « 'Uncovering the self': Religious Doubts, Spirituality and Unveiling in Egypt », *Religions*, 12:20, 2021, 19 p.

VERBEECK-BOUTIN (M.), « De l'axiologie », *CeROArt* [Online], 4, 2009.

VERKUTEN (M.), YILDIS (A. A.), « National (Dis)identification and Ethnic and Religious Identity: A Study Among Turkish-Dutch Muslims », *PSPB*, Vol. 33, No. 10, 2007, pp. 1448-1462.

VROON-NAJEM (V.), « Muslim Converts in the Netherlands and the Quest for a 'Culture-Free' Islam », *Archives de sciences sociales des religions*, 186, 2019, pp. 33-51.

VINCENT (B.), ALBERT (N. G.), « 'Tout sauf un Spectateur Passif' : Geoffrey Hill comme Critique Modèle », *Diogène*, Numéro 237 — 2012/1, pp.121-137.

VOYÉ (L.), « Religion, Values and Everyday Life », *Social Compass*, XVIII/4, 1981, pp. 447-458.

WARNER (R.), « Impossible Comparisons and Rational Choice Theory », *Southern California Law Review*, 68, 1995, pp. 1705-1740.

WARNER (R.), « Pluralism and Voluntarism in the English Religious Economy », *Journal of Contemporary Religion*, 21:3, 2006, pp. 389-404.

WEI (P.), « Les Valeurs Fondatrices des Sociétés Contemporaines », *Diogène*, 2008/1, n° 221, pp. 73-99.

WEILER (J. H. H.), « Freedom of Religion and Freedom from Religion: The European Model », *Maine Law Review*, vol. 65, n° 2, 2013, pp. 759-768.

WELLER (P.), « ‘Human Rights’, ‘Religion’ and the ‘Secular’. Variant Configurations of Religion(s), State(s) and Society(ies) », *Religion and Human Rights*, n° 1 — 2006, pp. 17-39.

WENG (E.), HALAFOFF (A.), « Media Representations of Religion, Spirituality and Non-Religion in Australia », *Religions*, 2020, 11, 332.

WERTHEIM (W. F.), « La Société et les Conflits entre Systèmes de Valeurs », *Cahiers Internationaux de Sociologie*, Vol. 28, 1960, pp. 33-46.

WESTON JANIS (M.), KENNEDY (D.), ARSANJANI (M. H), COLL (A. R.), GRIEF (N.), « Religion and International Law », *Proceedings of the Annual Meeting (American Society of International Law)*, 1988, Vol. 82, 1988, pp. 195-220.

WHITE (T. L.), GONSALVES (M. A.), « Dignity neuroscience: universal rights are rooted in human brain science », *Annals of the New York Academy of Sciences*, n° 1, 2021, pp. 1-15.

WHITE (S.), « Communist systems and the 'iron law of pluralism », *British Journal of Political Science*, 8 (1), 1978, pp. 101-117.

WICKES (R.), HIPP (J. R.), ZAHNOW (R.), MAZEROLLE (L.), « ‘Seeing’ Minorities and Perceptions of Disorder: Explicating the Mediating and Moderating Mechanisms of Social Cohesion », *Criminology*, Volume 51, Number 3, 2013, pp. 519-560.

WIEWORKA (M.), « Les Bases du National-Populisme », *Le Débat*, 1990/4, n° 61, pp. 32-37.

WILLAIME (J.-P.), « 1905 et la pratique d’une laïcité de reconnaissance sociale des religions », *Archives de sciences sociales des religions*, Numéro 129 — Janvier-Mars 2005, pp. 67-82.

WILLAIME (J. P.), « L’opposition des Infrastructures et des Superstructures : one Critique », *Cahiers International de Sociologie*, Vol. 61, 1979, pp. 309-327.

WILLAIME (J.-P.), « Les Attitudes des Jeunes à l’Egard de la Religion en France », *Les Cahiers Dynamiques*, 2012/1, n° 54, pp. 6-14.

WILLAIME (J.-P.), « Pour une sociologie transnationale de la laïcité dans l’ultra-modernité contemporaine », *Archives de sciences sociales des religions*, Numéro 146 — avril-juin 2009, pp. 201-218.

WILLIAMS (M. L.), « Socio-legal studies and the humanities — law, interdisciplinarity and integrity », *International Journal of Law in Context*, 5(3), 2009, pp. 243-261.

WOOD (C.), « Evolution, Civilization and History. A Response to Wiener and Rosenwein », Cultural and Social History, 4:4, 2007, pp. 559-565.

WOODHEAD (L.), « Five Concepts of Religion », *Revue Internationale de Sociologie*, Volume 21 (1), 2011, pp. 121-143.

WOODHEAD (L.), « Old, New, And Emerging Paradigms In The Sociological Study of Religion », *Nordic Journal of Religion and Society*, 22(2), 2009, pp. 103-121.

WOODHEAD (L.), « The rise of ‘no religion’ in Britain: The emergence of a new cultural majority », *Journal of the British Academy*, 4, 2016, pp. 245-61.

WOJAKOWSKI (D.), « Ethnic Pluralism in Local Communities after the 1990s Political Transformation », *Polish Sociological Review*, No. 139 (2002), pp. 315-336.

WUTHNOW (R.), HACKETT (C.), « The Social Integration of Practitioners of Non-Western Religions in the United States », *Journal for the Scientific Study of Religion*, 42:4, 2003, pp. 651-667.

YACOUB (J.), « Pour un Elargissement des Droits de l'Homme », *Diogène*, 2004/2 — N° 206, pp. 99-121.

YANG (F.), « Mapping Chienese Folk Religions in Mainland China and Taiwan », *Journal for the Scientific Study of Religion*, September 2012, Vol. 51, No. 3, pp. 505-521.

YANG (F.), « Oligopoly Dynamics: Consequences of Religious Regulation », *Social Compass*, 57(2), 2010, pp. 194-205.

YANG (F.), « Repression of Religious Institutions in China Under Xi Jinping », *Religious Freedom Institute*, No. 282, August 11 2020.

YANG (F.), « The Red, Black, and Gray Markets of Religion in China », *The Sociological Quarterly*, 47 — 2006, pp. 93-122.

YEAGER (T. J.), « Encomienda or Slavery? The Spanish Crown's Choice of Labor Organization in Sixteenth- Century Spanish America », *The Journal of Economic History*, Vol. 55, No. 4, 1995, pp. 842-859.

YETWIN (N. B.), « Thoreau, Jung, and the Collective Unconscious », *The Thoreau Society Bulletin*, No. 265, 2009, pp. 4-7.

YEŞILADA (B.), NOORDIJK (P.), WEBSTER (C.), « Religiosity and Social Values of the Cypriots », *Social Compass*, 56(1), 2009, pp. 15-34.

YEW (W. C.), AWANG (A. H.), SELVADURAI (S.), NOOR (M. M.), CHANG (P. K.), « A Comparative Study of Islam and Buddhism: A Multicultural Society Perspective », *Religions*, 2021, pp. 1098-1112.

YILMAZ (I.), MORIESON (N.), « A Systematic Literature Review of Populism, Religion and Emotions », *Religions*, 2021, 12, 272.

YILMAZ (I), MORIESON (N.), DEMIR (M.), « Exploring Religions in Relation to Populism: A Tour around the World », *Religions*, 2021, 12, 301.

YOO (W.), « Neither laziness nor workaholism: The Protestant ethic and economic prosperity among young urban Christians in contemporary China », *Social Compass*, Vol. 68(3), 2021, pp. 447-463.

ZAHRAA (M.), « Unique Islamic Law Methodology and the Validity of Modern Legal and Social Science Research Methods for Islamic Research », *Arab Law Quarterly*, Volume 18, N° 3/4, 2003, pp. 215-249.

ZEGHAL (M.), « La constitution du Conseil Français du Culte Musulman : reconnaissance politique d'un Islam français ? », *Archives de sciences sociales des religions*, Numéro 129 — Janvier-Mars 2005, pp. 97-113.

ZHANG (C.), LU (Y.), « The measure of Chinese Religions: Denomination-based or deity-based? », *Chinese Journal of Sociology*, Vol. 6(3), 2020, pp. 410-426.

ZIEBERTS (H.-G.), « Europe: A post-secular society? », *International Journal of Practical Theology*, Volume 13 — January 2009, pp. 1-16.

ZUBRZICKI (G.), « Religion, Religious Tradition, and Nationalism: Jewish Revival in Poland and 'Religious Heritage' in Québec », *Journal for the Scientific Study of Religion*, 51(3), 2012, pp. 442-455.

ZUK (P.), ZUK (P.), « Dangerous Liaisons between the Catholic Church and State: the religious and political alliance of the nationalist right with the conservative Church in Poland », *Journal of Contemporary Central and Eastern Europe*, vol. 27, Issue 2-3, pp. 191-212.

ZYLBERBERG (J.), « Laïcité, connais pas : Allemagne, Canada, Etats-Unis, Royaume-Uni », *Pouvoirs*, Numéro 75 — 1995, pp. 37-52.

CASE LAW.

I. International Case Law.

A. Inter-American system of human rights protection.

1. Inter-American Court of Human Rights.

a. Judgements.

Inter-American Court of Human Rights (IACHR). Case of Loayza Tamayo v. Peru. Reparations and Costs. Judgment of November 27, 1998. Series C No. 42.

IACHR. Case of "The Last Temptation of Christ" (Olmedo Bustos et al.) v. Chile. Merits, Reparations and Costs. Judgment of February 5, 2001. Series C No. 73.

IACHR. Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua. Merits, Reparations and Costs. Judgment of August 31, 2001. Series C No. 79.

IACHR. Case of the Moiwana Community v. Suriname. Preliminary Objections, Merits, Reparations and Costs. Judgment of June 15, 2005. Series C No. 124.

IACHR. Case of the Yakye Axa Indigenous Community v. Paraguay. Merits, Reparations and Costs. Judgment of June 17, 2005. Series C No. 125.

IACHR. Case of the Yakye Axa Indigenous Community v. Paraguay. Interpretation of the Judgment of Merits, Reparations and Costs. Judgment of February 6, 2006. Series C No. 142.

IACHR. Case of the Moiwana Community v. Suriname. Interpretation of the Judgment of Merits, Reparations and Costs. Judgment of February 8, 2006. Series C No. 145.

IACHR. Case of the Sawhoyamaxa Indigenous Community v. Paraguay. Merits, Reparations and Costs. Judgment of March 29, 2006. Series C No. 146.

IACHR, Case of the Saramaka People v. Suriname. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 28, 2007 Series C No. 172.

IACHR, Case of Salvador Chiriboga v. Ecuador. Preliminary Objections and Merits. Judgment of May 6, 2008 Series C No. 179.

IACHR. Case of Chitay Nech et al. v. Guatemala. Preliminary Objections, Merits, Reparations, and Costs. Judgment of May 25, 2010. Series C No. 212.

IACHR, Case of the Xákmok Kásek Indigenous Community. v. Paraguay. Merits, Reparations and Costs. Judgment of August 24, 2010. Series C No. 214.

IACHR. Case of Atala Riffo and daughters v. Chile. Merits, Reparations and Costs. Judgment of February 24, 2012. Series C No. 239.

IACHR, Case of Kichwa Indigenous People of Sarayaku v. Ecuador. Merits and Reparations. Judgment of June 27, 2012. Series C No. 245.

IACHR. Case of Artavia Murillo y Otros ("*Fecundación in Vitro*") v. Costa Rica. Merits, Reparations and Costs. Judgment of November 28, 2012.

IACHR, Case of the Community Garifuna Triunfo de la Cruz and its members v. Honduras. Merits, Reparations and Costs. Judgment of October 8, 2015. Series C No. 305.

IACHR, Case of the Kaliña and Lokono Peoples v. Suriname. Merits, Reparations and Costs. Judgment of November 25, 2015. Series C No. 309.

IACHR. Case of Gómez Murillo et al. v. Costa Rica. Judgment of November 29, 2016. Series C No. 326.

IACHR. Case of I.V. v. Bolivia. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 30, 2016. Series C No. 329.

IACHR, Case of the Indigenous Communities of the Lhaka Honhat Association (Our Land) v. Argentina. Merits, Reparations and Costs. Judgment of February 6, 2020. Series C No. 400.

b. Advisory Opinions.

IACHR. Habeas corpus in Emergency Situations (Arts. 27(2), 25(1) and 7(6) American Convention on Human Rights). Advisory Opinion OC-8/87 of January 30, 1987. Series A No. 8.

IACHR. Judicial Guarantees in States of Emergency (Arts. 27(2), 25 and (8) American Convention on Human Rights). Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9.

IACHR. Gender identity, and equality and non-discrimination with regard to same-sex couples. State obligations in relation to change of name, gender identity, and rights deriving from a relationship between same-sex couples (interpretation and scope of Articles 1(1), 3, 7, 11(2), 13, 17, 18 and 24, in relation to Article 1, of the American Convention on Human Rights). Advisory Opinion OC-24/17 of November 24, 2017. Series A No. 24.

IACHR. Differentiated approaches with respect to certain groups of persons in detention (Interpretation and scope of Articles 1(1), 4(1), 5, 11(2), 12, 13, 17(1), 19, 24 and 26 of the American Convention on Human Rights and other human rights instruments). Advisory Opinion OC-29/22 of May 30, 2022. Series A No 29.

2. Inter-American Commission on Human Rights.

Comisión IDH: Caso 2137 Testigos de Jehová (Argentina), informe 02/79 (05/03/1979).

Comisión IDH: Caso 12053 Comunidades indígenas Mayas del distrito de Toledo (Belice), informe 40/04 (12/10/2004).

Comisión IDH: Caso 12.219 Cristián Daniel Sahli Vera y otros (Chile), informe 43/05 (10/04/2005).

B. European Court of Human Rights.

European Court of Human Rights (ECtHR), Plenary, Judgment, 07/12/1976, *Handyside v. United Kingdom*, Application n° 5493/72.

ECtHR, Chamber, Judgment, 07/12/1976, *Kjeldsen, Busk Madsen and Pedersen v. Denmark*, Application n° 5095/71, 5920/72, 5926/72.

Commission, Decision on the Admissibility, 16/05/1977, *Arrowsmith v. United Kingdom*, Application n° 7050/75.

ECtHR, Chamber, Judgment, 25/04/1978, *Tyrer v. United Kingdom*, Application n° 5856/72.

Commission, Decision on the Admissibility, 12/07/1978, *X. C. v. United Kingdom*, Application n° 7992/77.

Commission, Decision on the Admissibility, 05/05/1979, *X. and Church of Scientology v. Sweden*, Application n° 7805/77.

Commission, Decision on the Admissibility, 19/03/1981, *Omkarananda and the Devine Light Zentrum v. Switzerland*, Application n° 8118/77.

ECtHR, Chamber, Judgment, 25/02/1982, *Campbell and Cosans v. United Kingdom*, Applications n° 7511/76 and 7743/76.

ECtHR, Chamber, Judgment, 28/11/1984, *Rasmussen v. Denmark*, Application n° 8777/79.

Commission, Decision on the Admissibility, 08/03/1985, *Børre Arnold Knussen v. Norway*, Application n° 11045/84.

ECtHR, Plenary, Judgment, 07/07/1989, *Soering v. United Kingdom*, Application n° 14038/88.

ECtHR, Chamber, Judgment, 23/10/1990, *Darby v. Sweden*, Application n° 11581/85.

Commission, Decision on the Admissibility,10/02/1993, *C. W. v. United Kingdom*, Application n° 18187/91.

Commission, Decision on the Admissibility, 03/05/1993, *Karaduman v. Turkey*, Application n° 16278/90.

ECtHR, Chamber, Judgment, 25/05/1993, *Kokkinakis v. Greece*, Application n° 14307/88.

ECtHR, Chamber, Judgment, 20/09/1994, *Otto-Preminger-Institut v. Austria*, Application n° 13470/87.

ECtHR, Grand Chamber, Judgment, 23/09/1994, *Jersild v. Denmark*, Application n° 15890/89.

ECtHR, Chamber, Judgment, 29/09/1996, *Manoussakis and Others v. Greece*, Application n° 18748/91.

ECtHR, Grand Chamber, Judgment, 15/11/1996, *Chahal v. United Kingdom*, Application n° 22414/93.

Commission, Decision on the admissibility, 03/12/1996, *Tuomo Konttinen v. Finland*, Application n° 24949/94

ECtHR, Chamber, Judgment, 17/12/1996, *Ahmed v. Austria*, Application n° 25964/94.

ECtHR, Grand Chamber, Judgment, 22/04/1997, *X, Y and Z v. United Kingdom*, Application n° 21830/93.

ECtHR, Chamber, Judgment, 02/05/1997, *D. v. United Kingdom*, Application n° 30240/96.

ECtHR, Chamber, Judgment, 01/07/1997, *Kalaç v. Turkey*, Application n° 20704/92.

Commission, Decision on the Admissibility, 10/09/1997, *Yvonne Th. M. Van Schijndel, Lutgarde Van Der Heyden and Dirk J. Leenman v. The Netherlands*, Application n° 30936/96.

Commission, Decision on the Admissibility, 15/01/1998, *Otto Herman Nyyssönen v. Finland*, Application n° 30406/96.

ECtHR, Grand Chamber, Judgment, 30/01/1998, *United Communist Party of Turkey And Others v. Turkey*, Application n° 133/1996/752/951.

ECtHR, Second Section, Judgment, 14/12/1999, *Serif v. Greece*, Application n° 38178/97.

ECtHR, 27/06/2000, Judgment, *Cha'are Shalom Ve Tsedek v. France*, Application n° 27417/95.

ECtHR, Third Section, Decision, 03/10/2000, *Refah Partisi (Parti de la prospérité) et autres c. Turquie*, Applications n° 41340/98, 41342/98, 41343/98, 41344/98.

ECtHR, Fourth Section, Decision, 25/05/2000, *Jimenez Alonso and Jimenez Merino v. Spain*, Application n° 51188/99.

ECtHR, Grand Chamber, Judgment, 26/10/2000, *Hassan and Tchaouch v. Bulgaria*, Application n° 30985/96.

ECtHR, Second Section, Decision, 15/02/2001, *Dahlab v. Switzerland*, Application n° 42393/98.

ECtHR, Fourth Section, Decision, 14/06/2001, *Alujer Fernandez and Caballero García v. Spain*, Application n° 53072/99.

ECtHR, Third Section, Decision, 02/10/2001, *Bruno PICHON et Marie-Line SAJOUS v. France*, Application n° 49853/99.

ECtHR, Fourth Section, Judgment, 09/04/2002, *Yazar v. Turquie*, Applications n° 22723/93, 22724/93 and 22725/93.

ECtHR, Fourth Section, Judgment, 29/04/2002, *Pretty v. United Kingdom*, Application n° 2346/02.

ECtHR, First Section, Judgment, 17/10/2002, *Agga v. Grèce*, Application n° 50776/99, 52912/99.

ECtHR, Grand Chamber, Judgment, 13/02/2003, *Refah Partisi (Welfare Party) v. Turkey*, Application n°41340/98, 41342/98, 41343/98 and 41344/98.

ECtHR, Fourth Section, Decision, 24/06/2003, *Garaudy v. France*, Application n° 65831/01.

ECtHR, First Section, Judgment, 04/12/2003, *Gündüz v. Turkey*, Application n° 35071/97.

ECtHR, Fourth Section, Judgment, 29/06/2004, *Leyla Şahin v. Turkey*, Application n° 44774/98.

ECtHR, Second Section, Decision, 16/11/2004, *Norwood v. United Kingdom*, Application n° 23131/03.

ECtHR, Fourth Section, Decision,14/06/2005, *Cârmuirea Spiritualā a Musulmanilor Din Republica Moldova v. Moldavia*, Application n° 12282/02.

ECtHR, Third Section, Decision, 30/06/2005, *Fazilet Partisi (Parti de la vertu) et Mehmet Recai Kutan v. Turkey*, Application n° 1444/02.

ECtHR, Second Section, Judgment, 13/09/2005, *I. A. v. Turkey*, Application n° 42571/98.

ECtHR, Grand Chamber, Judgment, 10/11/2005, *Leyla Şahin v. Turkey*, Application n° 44774/98.

ECtHR, Second Section, Decision, 24/01/2006, *Sevgi Kurtulmus v. Turkey*, Application n° 65500/01.

ECtHR, Second Section, Decision, 24/01/2006, *Şefika Köse and 93 Others v. Turkey*, Application n° 26625/02.

ECtHR, Third Section, Judgment, 27/04/2006, *Fazilet Partisi and Kutan v. Turkey*, Application n° 1444/02.

ECtHR, Second Section, Decision, 02/05/2006, *Yakup Köse and Others v. Turkey*, Application n° 50177/99.

ECtHR, First Section, Judgment, 06/07/2006, *Erbakan v. Turkey*, Application n° 59405/00.

ECtHR, Third Section, Decision, 29/03/2007, *Spampinato v. Italy*, Application n° 23123/04.

ECtHR, Third Section, Judgment, 05/04/2007, *Kavakçi v. Turkey*, Application n° 71907/01.

ECtHR, Grand Chamber, Judgment, 29/06/2007, *Folgerø and Others v. Norway*, Application n° 15472/02.

ECtHR, Former Second Section, Judgment, 09/10/2007, *Hasan et Eylem Zengin v. Turkey*, Application n° 1448/04.

ECtHR, Grand Chamber, Judgment, 04/12/2007, *Dickson v. United Kingdom*, Application n° 44362/04.

ECtHR, Grand Chamber, Judgment, 29/01/2008, *Saadi v. United Kingdom*, Application n° 13229/03.

ECtHR, Fifth Section, Judgment, 06/11/2008, *Leela Förderkreis E.V. and Others v. Allemagne*, Application n° 58911/00.

ECtHR, Fifth Section, Decision, 13/11/2008, *Mann Singh v. France*, Application n° 24479/07.

ECtHR, Fifth Section, Judgment, 04/12/2008, *Dogru v. France*, Application n° 27058/05.

ECtHR, Fifth Section, Judgment, 04/12/2008, *Kervanci v. France*, Application n° 31645/04.

ECtHR, Cinquième Section, Décision sur la recevabilité, 30/06/2009, *Hatice Bayrak v. France*, Application n° 14308/08.

ECtHR, Cinquième Section, Décision sur la recevabilité, 30/06/2009, *Jasvir Singh v. France*, Application n° 25463/08.

ECtHR, Cinquième Section, Décision sur la recevabilité, 30/06/2009, *Mahmoud Sadek Gamaleddyn v. France*, Application n° 18527/08.

ECtHR, Cinquième Section, Décision sur la recevabilité, 30/06/2009, *Ranjit Singh v. France*, Application n° 27561/08.

ECtHR, Cinquième Section, Décision sur la recevabilité, 30/06/2009, *Sara Ghazal v. France*, Application n° 29134/08.

ECtHR, Second Section, Judgment, 03/11/2009, *Lautsi v. Italy*, Application n° 30814/06.

ECtHR, Second Section, Judgment, 23/02/2010, *Ahmet Arslan and Others v. Turkey*, Application n° 41135/98.

ECtHR, Fifth Section, Decision, 25/05/2010, *Tuba Aktas v. France*, Application n° 43563/08.

ECtHR, Grand Chamber, Judgment, 02/11/2010, *Şerife Yigit v. Turkey*, Application n° 3976/05.

ECtHR, Fourth Section, Judgment, 04/01/2011, *Chrysostomos v. Turkey*, Application n° 66611/09.

ECtHR, Second Section, Decision, 11/01/2011, *Abdulkahar Askoy and 158 others v. Turkey*, Application n° 8498/05.

ECtHR, Fifth Section, Judgment, 20/01/2011, *Herrmann v. Germany*, Application n° 9300/07.

ECtHR, Second Section, Decision, 25/01/2011, *Murat Arslan and 59 others v. Turkey*, Application n° 9486/05.

ECtHR, Second Section, Decision, 25/01/2011, *Hamza Güler and 49 others v. Turkey*, Application n° 14377/05.

ECtHR, Fifth Section, Judgment, 27/01/2011, *Boychev and Others v. Bulgaria*, Application n° 77185/01.

ECtHR, Second Section, Decision, 01/02/2011, *Theodoras Dritsas v. Italy*, Application n° 2344/02.

ECtHR, Fifth Section, Judgment, 03/02/2011, *Siebenhaar v. Germany*, Application n° 18136/02.

ECtHR, Fifth Section, Judgment, 17/02/2011, *Wasmuth v. Germany*, Application n° 12884/03.

ECtHR, Grand Chamber, Judgment, 18/03/2011, *Lautsi and Others v. Italy*, Application n° 30814/06.

ECtHR, 12/04/2011, Decision, *Galena Vraniskoska v. the former Yugoslav Republic of Macedonia*, Application n° 30844/06.

ECtHR, Fifth Section, Decision, 05/07/2011, *Danuta Kraczkiewicz and Others v. Russia*, Applications n° 15120/10, 17883/10 and 13626/11.

ECtHR, Grand Chamber, Judgment, 07/07/2011, *Bayatyan v. Armenia*, Application n° 23459/03.

ECtHR, Second Section, Decision, 28/06/2011, *Hafid Ouardiri v. Switzerland*, Application n° 65840/09.

ECtHR, Fifth Section, Judgment, 30/06/2011, *Association Les Témoins de Jéhovah c. France*, Application n° 8916/05

ECtHR, Fourth Section, Decision, 05/07/2011, *Lambrin Dimchev Sotirov and Others v. Bulgaria*, Application n° 13999/05.

ECtHR, Fourth Section, Decision, 05/07/2011, *Raina Pantusheva and Others v. Bulgaria*, Applications n° 40047/04 *et al*.

ECtHR, First Section, Decision, 21/08/2011, *Ljerka Kovač v. Croatia*, Application n° 49910/06.

ECtHR, First Section, Decision, 30/08/2011, *Mohamad Abdel Rahman Bilasi-Ashiri v. Austria*, Application n° 40902/05.

ECtHR, Third Section, Decision, 30/08/2011, *Constantin-Cristian Catanā v. Romania*, Application n° 10473/05.

ECtHR, Third Section, Decision, 13/09/2011, *Adrian Vlad Bellamy v. Romania*, Application n° 2228/04.

ECtHR, First Section, Judgment, 03/11/2011, *Dimitras and Others v. Greece (N°2)*, Applications n° 34207/08 and 6365/09.

ECtHR, Second Section, Decision, 08/11/2011, *Hüseyin Sürmeli and Cemal Sevin v. Turkey*, Applications n° 29061/06 and 34582/06.

ECtHR, Second Section, Decision, 08/11/2011, *Mustafa Yildiz v. Turkey*, Application n° 24050/05.

ECtHR, Fifth Section, Decision, 22/11/2011, *Soukromá Základní Skola Cesta K Úspēchu v Praze S.R.O. et Občanské Sdruzení Skola Dētem v. Czech Republic*, Application n° 8314/10.

ECtHR, Third Section, Judgment, 10/01/2012, *Tsaturyan v. Armenia*, Application n° 37821/03.

ECtHR, Third Section, Judgment, 10/01/2012, *Bukharatyan v. Armenia*, Application n° 37819/03.

ECtHR, Third Section, Decision, 31/01/2012, *Gatis Kovalkovs v. Latvia*, Application n° 35021/05.

ECtHR, Second Section, Judgment, 03/04/2012, *Francesco Sessa v. Italy*, Application n° 28790/08.

ECtHR, Third Section, Decision, 15/05/2012, *Paula Bulgaru v. Romania*, Application n° 22707/05.

ECtHR, Third Section, Decision, 29/05/2012, *Sociedad Anonima del Ucieza v. Spain*, Application n° 38963/08.

ECtHR, Fifth section, Decision, 12/06/2012, *Hizb Ut-Tahrir And Others v. Germany*, Application n° 31098/08.

ECtHR, Second Section, Judgment, 12/06/2012, *Savda v. Turkey*, Application n° 42730/05.

ECtHR, Third Section, Judgment, 17/07/2012, *Fusu Arcadie and Others v. The Republic of Moldova*, Application n° 22218/06.

ECtHR, Second Section, Judgment, 17/07/2012, *Tarhan v. Turkey*, Application n° 9078/06.

ECtHR, Fourth Section, Decision, 18/09/2012, *Ásatrúarfélagid v. Iceland*, Application n° 22897/08.

ECtHR, First Section, Judgment, 25/09/2012, *Jehovas Zeugen in Österreich v. Austria*, Application n° 27540/05.

ECtHR, Third Section, Decision, 16/10/2012, *H. C. W. Schilder v. The Netherlands*, Application n° 2158/12.

ECtHR, Fourth Section, Decision, 23/10/2012, *Janusz Kawiecki v. Poland*, Application n° 15593/07.

ECtHR, Third Section, Decision, 10/12/2012, *Staatkundig Gereformeerde Partij*, Application n° 58369/10.

ECtHR, First Section, Judgment, 03/11/2011, *Dimitras and Others v. Greece (N°3)*, Applications n°44077/09, 15369/10 et 41345/10.

ECtHR, First Section, Decision, 08/01/2013, *Juma Mosque Congregation and Others v. Azerbaijan*, Application n° 15405/04.

ECtHR, Fifth Section, Decision, 08/01/2013, *Sukyo Mahikari Fance v. France*, Application n° 41729/09.

ECtHR, Fourth Section, Judgment, 15/01/2013, *Eweida and Others v. United Kingdom*, Application n° 48420/10, 59842/10, 51671/10 et 36516/10.

ECtHR, Fifth Section, Judgment, 31/01/2013, *Association Cultuelle du Temple Pyramide v. France*, Application n° 50615/07.

ECtHR, Fifth Section, Judgment, 31/01/2013, *Association des Chevaliers du Lotus d'Or v. France*, Application n° 50615/07.

ECtHR, Fifth Section, Judgment, 31/01/2013, *Eglise Evangélique Missionnaire et Salaûn v. France*, Application n° 25502/07.

ECtHR, Third Section, Judgment, 12/02/2013, *Austrianu v. Romania*, Application n° 16117/02.

ECtHR, Second Section, Judgment, 12/02/2013, *Vojnity v. Hangary*, Application n° 29617/07.

ECtHR, First Section, Judgment, 14/06/2013, *Kasymakhunov and Saybatalov v. Russia*, Applications n° 26261/05 and 26377/06.

ECtHR, Fourth Section, Decision, 02/07/2013, *Nicos Pavlides v. Turkey and Spyridon Georhakis v. Turkey*, Applications n° 9130/09 and 9143/09.

ECtHR, Grand Chamber, Judgment, 09/07/2013, *Sindicatul 'Păstorul Cel Bun' v. Rumania*, Application n° 2330/09.

ECtHR, Third Section, Decision, 17/09/2013, *Gavrilă Baciu v. Romania*, Application n° 76146/12.

ECtHR, Third Section, Judgment, 17/12/2013, *Vartic v. Romania (no. 2)*, Application n° 14150/08.

ECtHR, Fourth Section, Judgment, 14/03/2014, *The Church of Jesus Christ of Latter-Day Saints v. The United Kingdom*, Application n° 7552/09.

ECtHR, Fifth Section, Decision, 01/04/2014, *Representation of the Union of Councils for Jews in The Former Soviet Union and Union of Jewish Religious Organisations of Ukraine v. Ukraine*, Application n° 13267/05.

ECtHR, Second Section, 08/04/2014, *Magyar Keresztény Mennonita Egyház and Others v. Hungary*, Applications n° 0945/11, 23611/12, 26998/12, 41150/12, 41155/12, 41463/12, 41553/12, 54977/12 and 56581/12.

ECtHR, Third Section, Decision, 08/04/2014, *Paroisse Greco-Catholique Prunis v. Romania*, Application n° 38134/02.

ECtHR, Third Section, Decision, 06/05/2014, *Alida Maria Fränklin-Beentjes and Ceflu-Luz Da Floresta v. the Netherlands*, Application n° 28167/07.

ECtHR, Second Section, Judgment, 03/06/2014, *Buldu and Others v. Turkey*, Application n° 14017/08.

ECtHR, First Section, Judgment, 12/06/2014, *Biblical Centre of the Chuvash Republic v. Russia*, Application n° 33203/08.

ECtHR, Grand Chamber, Judgment, 12/06/2014, *Fernández Martínez v. Spain*, Application n° 56030/07.

ECtHR, First Section, Judgment, 26/06/2014, *Krupko and Others v. Russia*, Application n° 26587/07.

ECtHR, Grand Chamber, Judgment, 01/07/2014, *S.A.S. v. France*, Application n° 43835/11.

ECtHR, Third Section, Decision, 12/09/2014, *Mouvement pour l'intégration spirituelle dans l'Absolu v. Romania*, Application n° 18916/10.

ECtHR, Third Section, Decision, 09/09/2014, *Paroisse Greco-Catholique Remetii Pe Somes v. Romania*, Application n° 13073/10.

ECtHR, Second Section, Judgment, 16/09/2014, *Mansur Yalçin and Others v. Turkey*, Application n° 21163/11.

ECtHR, Third Section, Decision, 23/09/2014, *Octavian Cosac et Elena Irina Cosac v. Romania*, Application n° 28129/05.

ECtHR, First Section, Judgment, 02/20/2014, *Church of Scientology of St Petersburg and Others v. Russia,* Application n° 47191/06.

ECtHR, Fourth Section, Judgment, 07/10/2014, *Egheluri and Others v. Georgia*, Application n° 28490/02.

ECtHR, Second Section, Decision, 14/10/2014, *Gerhard Ingold v. Switzerland*, Application n° 51914/09.

ECtHR, Fourth Section, Judgment, 28/10/2014, *Gough v. The United Kingdom*, Application n° 49327/11.

ECtHR, Second Section, Judgment, 02/12/2014, *Cumhuriyetçi Egitim Ve Kültür Merkezi Vakfi v. Turkey*, Application n° 32093/10.

ECtHR, Second Section, Decision, 27/01/2015, *La Compagnie des Filles de la Charité de Saint-Vincent-de-Paul*, Application n° 19579/07.

ECtHR, Fourth Section, Judgment, 05/02/2015, *Dimitrova v. Bulgria*, Application n° 15452/07.

ECtHR, Fourth Section, Judgment, 24/02/2015, *Karaahmed v. Bulgaria*, Application n° 30587/13.

ECtHR, Third Section, Decision, 14/04/2015, *Greek Catholic Parish Pecseana and Others v. Romania*, Application n° 35839/07.

ECtHR, Fourth Section, Decision, 21/04/2015, *Union of Jehovah's Witnesses and Others v. Georgia*, Application n° 72874/01.

ECtHR, Third Section, Judgment, 16/07/2015, *Sanatkar v. Rumania*, Application n° 74721/12.

ECtHR, Fifth Section, Judgment, 26/11/2015, *Ebrahimian v. France*, Application n° 64846/11.

ECtHR, Fourth Section, Decision, 01/09/2015, *Ebe Gigliola Giorgini v. Italy*, Application n° 20034/11.

ECtHR, Fifth Section, Decision, 01/09/2015, *Igor Gennadyevich Ustyugov v. Ukraine*, Application n° 251/04.

ECtHR, Second Section, Decision, 25/09/2015, *Sami Özbil v. Turkey*, Application n° 45601/09.

ECtHR, Fourth Section, Decision, 03/11/2015, *Biserica Evanghelicā Românā – Parohia Poenarii Burchii v. Romania*, Application n° 44040/06.

ECtHR, Fifth Section, Decision, 03/11/2015, *Vladimirs Gubenko v. Latvia*, Application n° 6674/06.

ECtHR, Fifth Section, Decision, 17/11/2015, *Das Universelle Leben Aller Kulturen Weltweit E.V. v. Germany*, Application n° 60369/11.

ECtHR, Fourth Section, Judgment, 05/01/2016, *Süveges v. Hungary*, Application n° 50255/12.

ECtHR, Second Section, Judgment, 02/02/2016, *Sodan v. Turkey*, Application n° 18650/05.

ECtHR, Grand Chamber, Judgment, 23/02/2016, *Mozer v. The Republic of Moldova and Russia*, Application n° 11138/10.

ECtHR, Grand Chamber, Judgment, 26/04/2016, *İzzetin Dogan and Others v. Turkey*, Application n° 62649/10.

ECtHR, Third Section, Decision, 26/04/2016, *Zoubida Barik Edidi v. Spain*, Application n° 21780/13.

ECtHR, Fifth Section, Decision, 03/05/2016, *Gromada Ukrayinskoyi Greko-Katolytskoyi Tserkvy Sela Korshiv v. Ukraine*, Application, n° 9557/04.

ECtHR, Fifth Section, Decision, 03/05/2016, *Rymsko-Katolytska Gromada Svyatogo Klymentiya V Misti Sevastopoli v. Ukraine*, Application n° 22607/02.

ECtHR, Second Section, Judgment, 24/05/2016, *Association de Solidarité avec les Témoins de Jéhovah et autres v. Turquie*, Applications n° 36915/10 et 8606/13.

ECtHR, Second Section, Judgment, 07/06/2016, *Evner Aydemir v. Turkey*, Application n° 26012/11.

ECtHR, First Section, Judgment, 15/09/2016, *Papavasilakis v. Greece*, Application n° 66899/14.

ECtHR, Second Section, 06/12/2016, Decision, *Halil Yavuzel and Others v. Turkey*, Application n° 5317/16.

ECtHR, Second Section, 06/12/2016, Decision, *Mehmet Oran v. Turkey*, Application n° 1905/16.

ECtHR, Third Section, Judgment, 10/01/2017, *Osmanoğlu et Kocabaş v. Switzerland*, Application n° 29086/12.

ECtHR, Fourth Section, Judgment, 17/01/2017, *Tsartsidze and Others v. Georgia*, Application n° 18766/04.

ECtHR, Fifth Section, Judgment, 02/03/2017, *Moroz v. Ukraine*, Application n° 5187/07.

ECtHR, Fifth Section, Judgment, 23/03/2017, *Genov v. Bulgaria*, Application n° 40524/08.

ECtHR, Fifth Section, Judgment, 06/04/2017, *Klein and Others v. Germany*, Application n° 10138/11 and 3 others.

ECtHR, Fifth Section, Decision, 13/06/2017, *Chérif Boudelal v. la France*, Application n° 14894/14.

ECtHR, Fifth Section, Decision, 13/06/2017, *Bluma Zipa Perelman and Alain Michel Perelman v. Germany*, Application n° 32745/17.

ECtHR, Fifth Section, Judgment, 15/06/2017, *Metodiev and others v. Bulgaria*, Application n° 58088/08.

ECtHR, Second Section, Judgment, 11/07/2017, *Belcacemi and Oussar v. Belgium*, Application n° 37798/13.

ECtHR, Second Section, Judgment, 11/07/2017, *Dakir v. Belgium*, Application n° 4619/12.

ECtHR, First Section, Judgment, 12/10/2017, *Adyan and Others v. Armenia*, Application n° 75604/11.

ECtHR, First Section, Judgment, 16/11/2017, *"Orthodox Ohrid Archdiocese (Greek - Orthodox Ohrid Archdiocese of the Peć Patriarchy)" v. The Former Yugoslav Republic of Macedonia*, Application n° 3532/07.

ECtHR, Fourth Section, Judgment, 05/12/2017, *Hamidović v. Bosnia and Herzegovina*, Application n° 57792/15.

ECtHR, Third Section, Decision, 19/12/2017, *A.R. et L.R. against Switzerland*, Application n° 22338/15.

ECtHR, Fourth Section, Judgment, 27/02/2018, *Mockutè v. Lithuania*, Application n° 66490/09.

ECtHR, Fourth Section, Judgment, 12/04/2018, *Bektashi Community and Others v. The Former Yugoslav Republic of Macedonia*, Applications n° 48044/10, 75722/12, 25176/13.

ECtHR, Third Section, Judgment, 28/08/2018, *Ibragim Ibragimov and Others v. Russia*, Applications n° 1413/08 and 28621/11.

ECtHR, Second Section, Judgment, 18/09/2018, *Lachiri v. Belgium*, Application n° 3413/09.

ECtHR, Fifth Section, Judgment, 25/10/2018, *E.S. v. Austria*, Application n° 38450/12.

ECtHR, Grand Chamber, Judgment, 19/12/2018, *Molla Sali v. Greece*, Application n° 20452/14.

ECtHR, Second Section, Decision, 12/03/2019, *Sedat Aydin and others v. Turkey and 31 other applications*, Application n° 63130/15.

ECtHR, Fourth Section, Judgment, 03/09/2019, *Religious Community Of Jehovah's Witnesses Of Kryvyi Rih's Ternivsky District v. Ukraine*, Application n° 21477/10.

ECtHR, Fifth Section, Judgment, 17/10/2019, *Mushfig Mammadov and others v. Azerbaijan*, Applications n° 4604/08, 45823/11, 76127/13, 41792/15.

ECtHR, Fifth Section, Judgment, 20/02/2020, *Nasirov and Others v. Azerbaijan*, Application n° 58717/10.

ECtHR, Third Section, Judgment, 10/03/2020, *Dyagilev v. Russia*, Application n° 49972/16.

ECtHR, Third Section, Judgment, 12/05/2020, *Korostelev v. Russia*, Application n° 29290/10.

ECtHR, Fourth Section, Judgment, 09/06/2020, *Erlich and Kastro v. Rumania*, Applications n° 23735/16 et 23740/16.

ECtHR, First Section, Judgment, 25/06/2020, *Stavropoulos and Others v. Greece*, Application n° 52484/18.

ECtHR, Fourth Section, Decision, 29/09/2020, *Valeriu Maris v. Rumania*, Application n° 58208/14.

ECtHR, Third Section, Judgment, 20/10/2020, *Perovy v. Russia*, Application n° 47429/15.

ECtHR, Fourth Section, Judgment, 10/11/2020, *Neagu v. Rumania*, Application n° 21969/15.

ECtHR, Fourth Section, Judgment, 10/11/2020, *Saran v. Rumania*, Application n° 65993/16.

ECtHR, Fourth Section, Judgment, 10/11/2020, *The Religious Denomination of Jehovah's Witnesses in Bulgaria v. Bulgaria*, Application n° 5301/11.

ECtHR, Second Section, Judgment, 08/06/2021, *Ancient Baltic Religious Association Romuva v. Lithuania*, Application n° 48329/19.

ECtHR, Second Section, Judgment, 29/06/2021, *A.O. Falun Dafa and Others v. The Republic of Moldova*, Application n° 29458/15.

ECtHR, Fourth Section, Judgment, 20/07/2021, *Polat v. Austria*, Application n° 12886/16.

ECtHR, Fourth Section, Judgment, 20/07/2021, *Avanesyan v. Armenia*, Application n° 12999/15.

ECtHR, Fifth Section, Decision, 19/10/2021, *Róisín Shortall and Others v. Ireland*, Application n° 50272/18.

ECtHR, Fourth Section, Decision, 09/11/2021, *Hermina Geertruida De Wilde v. the Netherlands*, Application n° 9476/19.

ECtHR, Third Section, Judgement, 23/11/2021, *Centre of Societies for Krishna Consciousness in Russia and Frolov v. Russia*, Application n° 37477/11.

ECtHR, Third Section, Judgement, 23/11/2021, *Corley and Others v. Russia*, Applications n° 292/06 and 43490/06.

ECtHR, Grand Chamber, Judgement, 10/12/2021, *Abdi Ibrahim v. Norway*, Application n° 15379/16.

ECtHR, Second Section, Judgement, 14/06/2022, *Abdullah Yalçin v. Turkey (No. 2)*, Application n° 34417/10.

ECtHR, Fifth Section, Judgment, 03/10/2022, *Loste v. France*, Application n° 59227/12.

ECtHR, Fourth Section, Judgment, 11/10/2022, *Constantin-Lucian Spînu v. Roumanie*, Application n° 29443/20.

ECtHR, Second Section, Decision, 18/10/2022, *Sebahat Yarasir and Others v. Turkey*, Application n° 44281/18.

ECtHR, Third Section, Judgment, 08/11/2022, *Aygün v. Belgique*, Application n° 28336/12.

ECtHR, Fifth Section, Judgment, 17/11/2022, *Ilyin and Others v. Ukraine*, Application n° 74852/14.

ECtHR, Third Section, Decision, 13/12/2022, *Pelagia Papanikolaou v. Greece*, Application n° 28336/12.

ECtHR, Third Section, Judgment, 13/12/2022, *Tonchev and Others v. Bulgaria*, Application n° 56862/15.

ECtHR, Fifth Section, Judgment, 12/01/2023, *Kilic v. Austria*, Application n° 27700/15.

ECtHR, Third Section, Judgment, 07/03/2023, *Ossewaarde v. Russia*, Application n° 27227/17.

ECtHR, Second Section, Judgment, 09/05/2023, *Jehovah's Witnesses v. Finland*, Application n° 31172/19.

C. European Union's Court of Justice.

EUCJ, Grand Chamber, Judgment, 14/03/2017, *Samira Achbita, Centrum voor gelijkheid van kansen en voor racismebestrijding v. G4S Secure Solutions NV*, cas. C-157/15.

EUCJ, Grand Chamber, Judgment, 14/032017, *Bougnaoui et Association de défense des droits de l'homme (ADDH) v. Micropole Univers*, cas. C-188/15.

D. African Commission of human rights.

African Commission of Human Rights, Decision, 25/11/2009, *Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) / Kenya*, 276/03.

AComHR, Decision, 07/12/2004, *Garreth Anver Prince / South Africa*, 255/02.

AComHR, Decision, 07/05/2001, *Movement burkinabé des droits de l'Homme et des peuples / Burkina Faso*, 204/97.

AComHR, Decision, 15/11/1999, *AI, ComitB LB, LCHR, AMECEA c Soudan*, 48/90-50/91-52/91-89/93.

AComHR, Decision, 05/05/1999, *Amnesty International / Zambia*, 212/98.

E. United Nations Human Rights System.

1. United Nations Human Rights Committee.

HRC, Views, 13/03/2020, *Jong-bum Bae et al. v. Republic of Korea*, communication n° 2846/2016.

HRC, Views, 25/07/2019, *Juma Nazarov et al. v. Turkmenistan*, communication n° 2302/2013.

HRC, Views, 25/07/2019, *Sergey Geller v. Kazakhstan*, communication n° 2417/2014.

HRC, Views, 14/03/2019, *M. M. v. Denmark*, communication n° 2345/2014.

HRC, Views, 17/10/2018, *Danatar Durdyyev v. Turkmenistan*, communication n° 2268/2013.

HRC, Views, 27/07/2018, *Andrés Felipe Arias Leiva v. Colombia*, communication n° 2537/2015.

HRC, Views, 17/07/2018, *Miriana Hebbadj v. France*, communication n° 2807/2016.

HRC, Views, 17/07/2018, *Seyma Türkan v. Turkey*, communication n° 2274/2013.

HRC, Views, 17/07/2018, *Sonia Yaker v. France*, communication n° 2747/2016.

HRC, Inadmissibility Decision, *X. v. Afghanistan and Denmark*, communication n° 2515/2014.

HRC, Inadmissibility Decision, *R. G. and al. v. Denmark*, communication n° 2351/2014.

HRC, Inadmissibility Decision, *M. J. K. v. Denmark*, communication n° 2338/2014.

HRC, Views, 04/04/2018, *Adelaida Kim v. Uzbekistan*, communication n° 2175/2012.

HRC, Views, 27/032018, *W. K. v. Canada*, communication n° 2292/2013.

HRC, Views, 26/03/2018, *C. L. and Z. L. v. Denmark*, communication n° 2753/2016.

HRC, Views, 08/11/2017, *Merhdad Mohammad Jamshidian v. Belarus*, communication n° 2471/2014.

HRC, Views, 13/07/2017, *Alger v. Australia*, communication n° 2237/2013.

HRC, Views, 21/03/2017, *Zhaslan Suleimenov v. Kazakhstan*, communication n° 2146/2012.

HRC, Views, 20/03/2017, *M. Z. B. M. v. Denmark*, communication n° 2593/2015.

HRC, Views, 16/03/2017, *F. et G. v. Denmark*, communication n° 2530/2015.

HRC, Inadmissibility Decision, 03/11/2016, *Ch. H. O. v. Canada*, communication n° 2195/2012.

HRC, Views, 26/10/2016, *J. D. v. Denmark*, communication n° 2204/2012.

HRC, Views, 15/07/2016, *Navruz Tahirovich Nasyrlayev v. Turkmenistan*, communication n° 2219/2012.

HRC, Views, 15/07/2016, *Shadurdy Uchetov v. Turkmenistan*, communication n° 2226/2012.

HRC, Views, 15/07/2016, *Akmurad Nujanov v. Turkmenistan*, communication n° 2225/2012.

HRC, Views, 14/07/2016, *Akmurat Halbayewich Yegendurdyyew v. Turkmenistan*, communication n° 2227/2012.

HRC, Views, 14/07/2016, *Matkarim Aminov v. Turkmenistan*, communication n° 2220/2012.

HRC, Views, 14/07/2016, *Dovran Bahramovic Matyakubov v. Turkmenistan*, communication n° 2224/2012.

HRC, Views, 13/07/2016, *A. et B. v. Denmark*, communication n° 2291/2013.

HRC, Views, *Ahmet Hudaybergenov v. Turkmenistan*, communication n° 2222/2012.

HRC, Views, 29/10/2015, *Mahmud Hudaybergenov v. Turkmenistan*, communication n° 2221/2012.

HRC, Views, 23/07/2015, *Omo-Amenaghawon v. Denmark*, communication n° 2288/2013.

HRC, Inadmissibility Decision, 15/07/2015, *V. R. and N. R. v. Denmark and (Islamic Republic of) Iran*, communication n° 2745/2016.

HRC, Views, 15/07/2015, *Z. v. Denmark*, communication n° 2329/2014.

HRC, Views, 26/03/2015, *M. G. C. v. Australia*, communication n° 1875/2009.

HRC, Views, 25/03/2015, *Zafar Abdullayev v. Turkmenistan*, communication n° 2218/2012.

HRC, Inadmissibility Decision, *M. v. Belgium*, communication n° 2176/2012.

HRC, Views, 21/10/2014, *Viktor Leven v. Kazakhstan*, communication n° 2131/2012.

HRC, Views, 16/10/2014, *B. L. v. Australia*, communication n° 2053/2011.

HRC, Views, 15/10/2014, *Young-Kwan Kim et al. v. Republic of Korea*, communication n° 2179/2012.

HRC, Views, 21/07/2014, *Tatyana Yachnik v. Belarus*, communication n° 1990/2010.

HRC, Views, 18/07/2014, *Z. v. Australia*, communication n° 2049/2011.

HRC, Views, 26/03/2014, *X. v. Denmark*, communication n° 2007/2010.

HRC, Views, 19/07/2013, *Mann Singh v. France*, communication n° 1928/2010.

HRC, Inadmissibility Decision, *A. P. v. Federation of Russia*, communication n° 1857/2008.

HRC, Views, 01/11/2012, *Singh v. France*, communication n° 1852/2008.

HRC, Views, 22/07/2011, *Singh v. France*, communication n° 1876/2009.

HRC, Views, 29/03/2011, *V. D. A. v. Argentina*, communication n° 1608/2009.

HRC, Views, 24/03/2011, *Min-Kyu Jeong and al. v. Republic of Korea*, communications n° 1642/2007 and 1741/2007.

HRC, Views, 25/03/2010, *Kaba v. Canada and Guinea*, communication n° 1465/2006.

HRC, Views, 23/03/2010, *Jung and al. v. Republic of Korea*, communications n° 1593/2007 and 1603/2007.

HRC, Views, 10/03/2009, *Vassilari and al. v. Greece*, communication n° 1570/2007.

HRC, Views, 31/10/2007, *Prince v. South Africa*, communication n° 1474/2006.

HRC, Views, 03/11/2006, *Yoon and Choi v. Republic of Korea*, communications n° 1321/2004 and 1322/2004.

HRC, Inadmissibility Decision, *Khan v. Canada*, communication n° 1302/2004.

HRC, Views, 21/10/2005, *Sister Immaculate Joseph and al. v. Sri Lanka*, communication n° 1249/2004.

HRC, Views, 26/07/2005, *Malakhovsky and Pikul v. Belarus*, communication n° 1207/2003.

HRC, Views, 20/07/2005, *Lee v. Republic of Korea*, communication n° 1119.2003.

HRC, Views, 05/11/2004, *Hudoyberganova v. Uzbekistan*, communication n° 931/2000.

HRC, Views, 03/11/2004, *Leirvåg and al. v. Norway*, communication n° 1155/2003.

HRC, Views, 15/07/2003, *Kang v. Republic of Korea*, communication n° 878/1999.

HRC, Views, 02/04/2002, *Boodoo v. Trinidad and Tobago*, communication n° 721/1996.

HRC, Views, 25/10/2000, *Buckle v. New-Zealand*, communication n° 858/1999.

HRC, Views, 18/10/2000, *Ross v. Canada*, communication n° 736/1997.

HRC, Views, 03/11/1999, *Westerman v. The Netherlands*, communication n° 682/1996.

HRC, Views, 03/11/1999, *Waldman v. Canada*, communication n° 694/1996.

HRC, Views, 15/07/1999, *A. v. New-Zealand*, communication n° 754/1997.

HRC, Views, 20/10/1998, *Park v. Republic of Korea*, communication n° 628/1995.

HRC, Views, 21/10/1994, *Coeriel et Aurik v. The Netherlands*, communication n° 453/1991.

HRC, Inadmissibility Decision, 25/04/1994, *M. A. B., W. A. T., and J.-A. Y. T. v. Canada*, communication n° 570/1993.

HRC, Views, 25/07/1990, *Jarvinen v. Finlande*, communication n° 295/1988.

HRC, Views, 12/07/1990, *Delgado Paez v. Colombia*, communication 195/1995.

HRC, Inadmissibility Decision, *J. V. K. and C. M. G. v. K.-S. v. The Netherlands*, communication n° 483/1991.

HRC, Inadmissibility Decision, *J. P. L. and al. v. France*, communication n° 472/1991.

HRC, Inadmissibility Decision, *J. P. v. Canada*, communication n° 446/1991.

HRC, Views, 09/11/1989, *Singh Bhinder v. Canada*, communication n° 208/1986.

HRC, Inadmissibility Decision, 09/07/1985, *L. T. K. v. Finland*, communication n° 185/1984.

HRC, Views, 08/04/1985, *Muhonen v. Finland*, communication n° 089/1981.

HRC, Views, 01/04/1985, *Joana v. Madagascar*, communication n° 132/1982.

HRC, Views, 09/04/1981, *Hartikainen and al. v. Finland*, communication n° 040/1981.

HRC, Inadmissibility Decision, *M. A. v. Italy*, communication n° 117/1981.

2. United Nations Committee on the Rights of the Child.

Committee on the Rights of the Child (CRC), Views, 09/07/2021, *M. W. v. Germany*, communication n° 75/2019.

CRC, Views, 04/02/2021, *A. B. v. Finland*, communication n° 51/2018.

CRC, Decision, 15/05/2019, *X. v. Finland*, communication n° 6/2016.

CRC, Decision, 11/11/2020, *J. J., O. L., A. J. and A. S. v. Finland*, communication n° 87/2019.

CRC, Decision, 28/09/2020, *R. N. v. Finland*, communication n° 98/2019.

II. Domestic case-law.

A. France.

1. Conseil Constitutionnel.

Décision n° 62-243/244 SEN du 29/03/1963, *Sénat, Wallis-et-Futuna*.

Décision n° 67-432 AN du 29/06/1967, *A.N. Indre (1ère circ.)*.

Décision 67-76 DC du 15/07/1976, *Loi modifiant l'ordonnance n° 59-244 du 4 février 1959 relative au statut général des fonctionnaires*.

Décision n° 77-88 DC du 23/11/1977, *Loi organique modifiant l'ordonnance n° 58-1065 du 7 novembre 1958 portant loi organique relative à la composition et à la durée des pouvoirs de l'Assemblée nationale (territoires d'outre-mer)*.

Décision n° 86-217 DC du 18/09/1986, *Loi relative à la liberté de communication*.

Décision n° 88-1057 AN du 21/10/1988, *A.N. Hérault (1ère circ.)*.

Décision n° 2001-446 DC du 27/06/2001, *Loi relative à l'interruption volontaire de grosses et à la contraception*.

Décision n° 2004-505 DC du 19/11/2004, *Traité établissant une Constitution pour l'Europe*.

Décision n° 2009-591 DC du 22/10/2009, *Loi tendant à garantir la parité de financement entre les écoles élémentaires publiques et privées sous contrat d'association lorsqu'elles accueillent des élèves scolarisés hors de leur commune de résidence*.

Décision n° 2010-613 DC du 07/10/2010, *Loi interdisant la dissimulation du visage dans l'espace public*.

Décision n° 2011-157 QPC du 05/08/2011, *Société Somodia*.

Décision 2011-181 QPC du 13/10/2011, *M. Antoine C.*

Décision n° 2012-297 QPC du 21/02/2013, *Association pour la promotion et l'expansion de la laïcité [Traitement des pasteurs des églises consistoriales dans les départements du Bas-Rhin, du Haut-Rhin et de la Moselle]*.

Décision n° 2013-353 QPC du 18/10/2013, *M. Franck M. et autres*.

2. Conseil d'Etat.

CE, 10/05/1912, *Abbé Bouteyre*, Application n° 46027.

CE, Ass., 09/11/2016, *Fédération départementale des libres penseurs de Seine-et-Marne*, Application n° 395122.

CE, Ass., 09/11/2016, *Fédération de la libre pensée de Vendée*, Application n° 395223.

C. Spain.

Pleno, Sentence du Tribunal Constitutionnel (STC) 24/1982 en date du 13 mai, Amparo application n° 68/1982.

Auto 617/1984 en date du 31 octobre 1984, Amparo application n° 296/1984.

STC 19/1985 en date du 13 février 1985, Amparo application n° 98/1984.

Auto 180/1986 en date du 21 février 1986, Amparo application n° 189/1984.

STC 20/1990 en date du 15 février 1990, Amparo application n° 1503/1987.

Pleno, STC 120/1990 en date du 27 juin, Amparo application n° 443/1990.

Pleno, STC 137/1990 en date du 19 juillet, Amparo application n° 397/1990.

Auto 19/1992 en date du 27 janvier 1992, Amparo application n° 1345/1991.

Pleno, STC 340/1993 en date du 16 novembre 1993, questions d'inconstitutionnalité 1658/1988, 1254/1990, 1270/1990, 1329/1990 et 2631/1991.

STC 166/1996 en date du 28 octobre 1996, Amparo application n° 3164/1994.

STC 177/1996 en date du 11 novembre 1996, Amparo application n° 2996/1994.

STC 141/2000 en date du 29 mai 2000, Amparo application n° 4233/1996.

Pleno, STC 46/2001 en date du 15 février 2001, Amparo application n° 3083/96.

STC 128/2001 en date du 4 juin 2001, Amparo application n° 5303/97.

STC 180/2001 en date du 17 septembre 2001, Amparo application n° 1434/98.

Pleno, STC 154/2002 en date du 18 juillet 2002, Amparo application n° 3468/97.

STC 5/2004 en date du 16 janvier 2004, Amparo application n° 2330-2003.

STC 99/2004 en date du 27 mai 2004, Amparo application n° 3293-2004.

STC 101/2004 en date du 2 juin 2004, Amparo application n° 2563-2002.

STC 296/2005 en date du 21 novembre 2005, Amparo application n° 5216-2002 et 5222-2002.

Pleno, STC 38/2007 en date du 15 février 2007, question d'inconstitutionnalité 4831-2002.

Pleno, STC 80/2007 en date du 19 avril 2007, question d'inconstitutionnalité 4126-2003.

Pleno, STC 87/2007 en date du 19 avril 2007, question d'inconstitutionnalité 3633-2005.

Pleno, Auto 257/2007 en date du 23 mai 2007, question d'inconstitutionnalité 163-2007.

STC 128/2007 en date du 4 juin 2007, Amparo application n° 1656-2001.

Pleno, STC 12/2008 en date du 29 janvier 2008, question d'inconstitutionnalité n° 4069-2007, recours en inconstitutionnalité n° 5653-2007.

Pleno, STC 13/2009 en date 19 janvier 2009, recours en inconstitutionnalité n° 4057-2005.

STC 31/2009 en date du 29 janvier 2009, Amparo application n° 8424-2008.

STC 44/2009 en date du 12 février 2009, Electoral amparo application n° 1267-2009.

Pleno, Auto 190/2009 en date du 23 juin 2009, question d'inconstitutionnalité n° 3141-2009.

STC 34/2011 en date du 28 mars 2011, Amparo application n° 5701-2006.

Pleno, STC 40/2011 en date du 31 mars 2011, recours en inconstitutionnalité n° 5404-2005.

Pleno, STC 51/2011 en date du 14 avril 2011, Amparo application 3338-2002.

Pleno, STC 207/2013 en date du 5 décembre 2007, recours en inconstitutionnalité n° 4285-2013.

Pleno, STC 145/2015 en date du 25 juin 2015, Amparo application n° 412-2012.

Pleno, STC 177/2015 en date du 22 juillet 2015, Amparo application n° 956-2009.

STC 11/2016 en date du 1er février 2016, Amparo application n° 533-2014.

B. United Kingdom.

House of Lords, R. (SB) v Governors of Denbigh High School [2006] UKHL 15.

REPORTS.

I. European Court of Human Rights.

Council of Europe, *The Conscience of Europe. 50 Years of the European Court of Human Rights*, London, Third Millennium Publishing, 2010, 222 p.

Cour Européenne des Droits de l'Homme (31/12/2021) Guide sur l'article 6 de la Convention européenne des droits de l'homme. Droit A un procès équitable (volet civil), retrieved from: https://www.echr.coe.int/documents/guide_art_6_criminal_fra.pdf (last accessed: 13/05/2022).

Cour Européenne des Droits de l'Homme (31/12/2021), Guide sur l'article 6 de la Convention européenne des droits de l'homme. Droit A un procès équitable (volet pénal), retrieved from https://www.echr.coe.int/documents/guide_art_6_fra.pdf (last accessed: 13/05/2022).

Cour Européenne des Droits de l'Homme (31/12/2021) Guide sur l'article 9 de la Convention européenne des droits de l'homme, Liberté de pensée, de conscience et de religion, retrieved from: https://www.echr.coe.int/Documents/Guide_Art_9_FRA.pdf (last accessed: 04/08/2022).

European Court of Human Rights, *Annual Report 2022 of the European Court of Human Rights, Council of Europe*, 2022, 173 p.

II. Inter-American Commission of Human Rights.

A. Reports by country.

Comisión IDH, 17 noviembre 1979, Informe sobre la situación de derechos humanos en Nicaragua, capítulo VI.

Comisión IDH, 13 octubre 1981, Informe sobre la situación de los derechos humanos en la República de Guatemala, capítulo VI.

Comisión IDH, 3 octubre 1983, Informe sobre la situación de los derechos humanos en Guatemala, capítulo VI.

Comisión IDH, 11 abril 1980, Informe sobre la situación de los derechos humanos en Argentina, capítulo X–C.

B. Annual Reports.

Comisión IDH, 2 octubre 1980, Informe anual de la Comisión interamericana de derechos humanos 1979-1980.

Comisión IDH, 28 septiembre 1984, Informe anual de la Comisión Interamericana de derechos humanos 1983-1984.

III. United Nations

A. Human Rights Committee.

CRC, General Comment n° 11, CRC/C/GC/11, 12/02/2009.

CRC, General Comment n° 8, CRC/C/GC/8, 02/032007.

HRC, General Comment n° 22, CCPR/C/21/Rev.1/Add.4, 27/09/1993.

B. UN General Assembly.

United Nations' General Assembly (UNGA), Report, 30/01/2023, Landscape of freedom of religion. Report of the Special Rapporteur on freedom of religion or belief, A/HRC/52/38.

UNGA, Report, 13/04/2021, Countering Islamophobia/anti-Muslim hatred to eliminate discrimination and intolerance based on religion or belief, A/HRC/46/30.

UNGA, Report, 13/04/2021, Interim report of the Special Rapporteur on freedom of religion or belief, Ahmed Shaheed. Elimination of all forms of religious intolerance, A/75/385.

UNGA, Report, 24/08/2020, Gender-based violence and discrimination in the name of religion or belief, A/HRC/43/48.

UNGA, Report, 20/09/2019, Elimination of all forms of religious intolerance, A/74/358.

United Nations' Economic and Social Council (UNECOSOC), Report, 14/05/1985, Proposal concerning a definition of the term 'minority', E/CN.4/Sub.2/1985/31.

UNECOSOC, Report, 1979, Study on the rights of persons belonging to ethnic, religious and linguistic minorities, E/CN.4/Sub.2/384/Rev.1.

IV. National Reports.

Australian Bureau of Statistics, 04/07/2022, *Religious affiliation in Australia. Exploration of the changes in reported religion in the 2021 Census* (Accessible at https://www.abs.gov.au/articles/religious-affiliation-australia; Last accessed: 11/12/2022).

ONLINE MATERIAL.

I. Articles.

AMIOTTE-SUCHET (L.), ALTGLAS (V.), « Sectes, controverses et pluralisme : une sociologie sceptique des religions. Entretien avec le sociologue des religions James A. Beckford », *ethnographiques.org*, Numéro 15, février 2008 (Last accessed: 24/04/2022).

BERRY (S.), « The UN Human Rights Committee Disagrees with the European Court of Human Rights Again: The Right to Manifest Religion by Wearing a Burqa », *EJIL : Talk ! Blog of the European Journal of International Law*, 03/01/2019 (Last accessed: 24/11/2021).

BRUBAKER (R.), « A new "Christianist" Secularism in Europe », *The Immanent Frame. Secularism, Religion and the Public Sphere*, 11.10.2016 (Last accessed: 21/11/2021).

CABALLERO OCHOA (J. L.), « Las Perspectivas del Derecho Fundamental de Libertad Religiosa en el Sistema Intreramericano de Protección a los Derechos Humanos », *IUS Revista Jurídica* [online: last accessed: 19/07/2022].

CAVE (P.), « Judaism: Naturalism, Neurology, and Narrative », *Secular Humanism*, Volume 42, No. 3, April/May 2022 (Last accessed: 24/05/2022).

COMPFORT (D. B.), « God's Trimesters: His Infancy, Adolescence, and Adulthood », *Secular Humanism*, Volume 42, No. 3, April/May 2022 (Las accessed: 24/05/2022).

DAMASIO (A.), « How Neuroscience Helps Us to Understand Human Nature », *Brain World Magazine*, 14/04/2020 (Last accessed: 11/09/2022).

DAVIES (L.), « A Methodological Worry for 'Top Down' Accounts of Human Rights », *PRACTICAL ETHICS. Ethics in the News* (University of Oxford's Philosophy blog), 17/11/2014 (Last accessed: 02/11/2022).

FAGAN (P.), « Why Religion Matters: The Impact of Religious Practice on Social Stability », *Civil Society* [Report], 25/06/1996 (Last accessed: 13/12/2022).

GOLEBIOWSKA (E. A.), GANCHEVA (S.), « Religious Regulation in Poland », *Oxford Research Encyclopedia of Politics*, 2019 (Last accessed: 29/08/2023).

HABERMAS (J.), « A "post-secular" society — what does it mean? », *Reset Dialogues on Civilizations*, 16/09/2008 (Last accessed: 21/11/2021).

INGLEHART (R.), NORRIS (P.), « The True Clash of Civilizations », *Foreign Policy*, 04/11/2009 (Last accessed: 21/07/2022).

MOUNTAIN (D.), « Greenwashing God: The Danger of Religious Environmentalism », *Secular Humanism*, Volume 42, No. 2, February/March 2022 (Last accessed: 24/05/2022).

SAUNDERS (W.), « Does Neutrality Equal Secularism? The European Court of Human Rights Decides Lautsi v. Italy », *Engage*, Volume 12, Issue 3, November 2011 (Last accessed: 22/01/2022).

SCHILLING (D. M.), « A Bottom-Up, Top-Down Approach in Worker Safety Reform », *The New York Times*, 02/05/2013 (Last accessed: 02/11/2022).

WOLF (G.), « The Church of the Non-Believers », *Wired*, 11.01.2006 (Last accessed: 20/02/2021).

II. Reports.

Pew Research Centre, *Widespread Support For Banning Full Islamic Veil in Western Europe* (link), 08/07/2010 (Last accessed: 21/09/2023).

Pew Research Centre, *Table: Muslim Population by Country* (link), 27/01/2011 (Last accessed: 27/11/2023).

Pew Research Centre, *In 30 countries, heads of state must belong to a certain religion* (link), 22/07/2014 (last accessed: 06/10/2023).

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